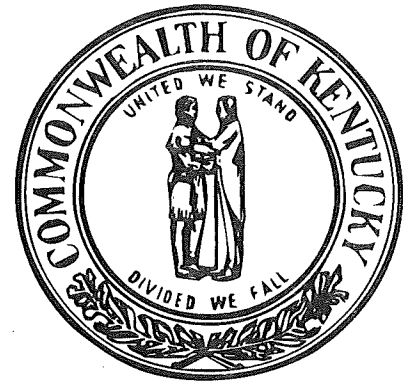


# ADMINISTRATIVE REGISTER OF KENTUCKY



LEGISLATIVE RESEARCH COMMISSION  
Frankfort, Kentucky

VOLUME 25, NUMBER 2  
SATURDAY, AUGUST 1, 1998

August Agenda, ARRS .....	161
Regulation Review Procedure .....	164

## NOTICES OF INTENT:

Higher Education Assistance Authority .....	165
Registry of Election Finance .....	166
Retirement Systems .....	166
Finance and Administration Cabinet .....	167
Kentucky Kare Health Insurance Authority .....	168
Board of Pharmacy .....	169
Board of Alcohol and Drug Counselors .....	171
Office of Petroleum Storage Tank Environmental Assurance Fund .....	172
Justice Cabinet - Parole Board .....	178
Justice Cabinet - Department of Corrections .....	179
Justice Cabinet - Department of State Police .....	181
Justice Cabinet - Ky. Law Enforcement Council .....	181
Transportation Cabinet .....	185
Education Professional Standards Board .....	186
Commission on the Deaf and Hard of Hearing .....	187
School Facilities Construction Commission .....	190
Workforce Development Cabinet .....	190
Labor Cabinet .....	191
Department of Insurance .....	197
Department of Financial Institutions .....	200
Department of Housing, Buildings and Construction .....	202
Cabinets for Health Services, and Families and Children .....	204

## EMERGENCIES:

Retirement Systems .....	222
Finance and Administration Cabinet .....	225
Parole Board .....	226
Justice Cabinet - Parole Board .....	226
Justice Cabinet - Department of Corrections .....	230
Justice Cabinet - State Police .....	234
Commission on the Deaf and Hard of Hearing .....	236
School Facilities Construction Commission .....	244
Workforce Development Cabinet .....	245
Labor Cabinet .....	246
Department of Insurance .....	272
Cabinets for Health Services, and Families and Children .....	283

## AS AMENDED:

Real Estate Commission .....	293
Lottery Corporation .....	299
Department of Fish and Wildlife Resources .....	300
Department of Agriculture .....	308
Department of Financial Institutions .....	313

Cabinet for Health Services .....	315
-----------------------------------	-----

## AMENDED AFTER HEARING:

Transportation Cabinet .....	350
Cabinet for Health Services .....	355

## PROPOSED AMENDMENTS RECEIVED THROUGH NOON, JULY 15, 1998:

Higher Education Assistance Authority .....	375
Personnel Board .....	398
Finance and Administration Cabinet .....	400
Board of Psychology .....	403
Department of Fish and Wildlife Resources .....	409
Department of Agriculture .....	415
Transportation Cabinet .....	418
Education Professional Standards Board .....	429
Workforce Development Cabinet .....	431
Board of Tax Appeals .....	434
Cabinet for Health Services .....	437

## NEW ADMINISTRATIVE REGULATIONS RECEIVED THROUGH NOON, JULY 15, 1998:

Higher Education Assistance Authority .....	450
Board of Dentistry .....	475
Board of Art Therapists .....	476
Board of Professional Counselors .....	480
Department of Fish and Wildlife Resources .....	486
Department of Agriculture .....	488
Justice Cabinet - Department of Corrections .....	490
Department of Insurance .....	493
July 14, 1998 Minutes of the ARRS .....	495
Other Committee Reports .....	502

## CUMULATIVE SUPPLEMENT

Locator Index - Effective Dates .....	B2
KRS Index .....	B8
Subject Index .....	B11

## MEETING NOTICE

The Administrative Regulation Review Subcommittee is **tentatively** scheduled to meet on August 4, 1998, at 10 a.m. in Room 149 of the Capitol Annex. See **tentative agenda** on pages 161-163 of this Administrative Register.

The **ADMINISTRATIVE REGISTER OF KENTUCKY** is the monthly supplement for the 1998 Edition of **KENTUCKY ADMINISTRATIVE REGULATIONS SERVICE**.

**HOW TO CITE:** Cite all material in the **ADMINISTRATIVE REGISTER OF KENTUCKY** by Volume number and Page number. Example: Volume 25, Kentucky Register, page 318 (short form: 25 Ky.R. 318).

**KENTUCKY ADMINISTRATIVE REGULATIONS** are codified according to the following system and are to be cited by Title, Chapter and Regulation number, as follows:

Title		Chapter	Regulation
806	KAR	50:	155
Cabinet, Department, Board or Agency		Office, Division, or Major Function	Specific Regulation

#### **ADMINISTRATIVE REGISTER OF KENTUCKY**

(ISSN 0096-1493)

c 1998 Legislative Research Commission, All Rights Reserved

The Administrative Register of Kentucky is published monthly by the Legislative Research Commission, Frankfort, Kentucky 40601. Subscription rate, postpaid in the United States: \$48 (plus 6% Kentucky sales tax) per year for 12 issues, beginning in July and ending with the June issue of the subsequent year. Second class postage paid at Frankfort, Kentucky. POSTMASTER: Send address changes to Administrative Register of Kentucky, Room 64, State Capitol, Frankfort, Kentucky 40601.

#### **KENTUCKY LEGISLATIVE RESEARCH COMMISSION**

##### **Chairmen**

Senator Larry Saunders  
Senate President

Representative Jody Richards  
House Speaker

##### **Senate and House Members**

Senator Walter Blevins, Jr.  
President Pro Tem

Representative Larry Clark  
Speaker Pro Tem

Senator David K. Karem  
Majority Floor Leader

Representative Gregory D. Stumbo  
Majority Floor Leader

Senator Dan Kelly  
Minority Floor Leader

Representative Danny R. Ford  
Minority Floor Leader

Senator Nick Kafoglis  
Majority Caucus Chairman

Representative Jim Callahan  
Majority Caucus Chairman

Senator Richard L. "Dick" Roeding  
Minority Caucus Chairman

Representative Stan Cave  
Minority Caucus Chairman

Senator Fred Bradley  
Majority Whip

Representative Joe Barrows  
Majority Whip

Senator Elizabeth Tori  
Minority Whip

Representative Woody Allen  
Minority Whip

Don Cetrulo, Jr. Director

Samuel L. Hensley, Assistant Director for Education and Information

#### **ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE**

##### **Members**

Representative John A. Arnold, Jr., Chairman  
Senator Nick Kafoglis  
Senator Joey Pendleton  
Senator Richard L. "Dick" Roeding  
Representative Woody Allen  
Representative Jim Bruce  
Representative Jimmie Lee

##### **Staff**

Susan Eastman  
Gregory Karambellas  
Donna Little  
Stephen Lynn  
Angela Phillips  
Donna Valencia  
Susan Wunderlich



**VOLUME 25, NUMBER 2 – AUGUST 1, 1998**

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE  
TENTATIVE AGENDA – August 4, 1998 at 10:00 a.m. in Room 149, Capitol Annex**

(& E) - means that the emergency regulation has previously been reviewed by the subcommittee

**STATE BOARD OF ELECTIONS**

**Forms and Procedures**

- 31 KAR 4:120E. Additional precinct officers. (Deferred from July)
- 31 KAR 4:130E. Submitting Absentee Ballot Application by facsimile.

**FINANCE AND ADMINISTRATION CABINET  
Office of the Secretary**

**Engineering**

- 200 KAR 7:011. Repeal of 200 KAR 7:010.

**Office of Financial Management and Economic Analysis**

**Kentucky Private Activity Bond Allocation Committee**

- 200 KAR 15:010E. Formula for allocation of private activity bonds. (Deferred from June)

**KENTUCKY LOTTERY CORPORATION**

**Lottery**

- 202 KAR 3:030. Retailer regulations. (Public Hearing in July)

**DEPARTMENT OF AGRICULTURE**

**Livestock Sanitation**

- 302 KAR 20:040E. Entry into Kentucky. (Deferred from June)

**NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION CABINET  
Department for Environmental Protection  
Division of Water**

**Water Quality**

- 401 KAR 5:002E. Definitions of terms for 401 KAR Chapter 5. (Deferred from July)
- 401 KAR 5:009E. Permits for swine feeding operations. (Deferred from July)

**JUSTICE CABINET  
Department of Corrections**

**Office of the Secretary**

- 501 KAR 6:040. Kentucky State Penitentiary.
- 501 KAR 6:110. Roederer Correctional Complex.

**TRANSPORTATION CABINET**

**Professional Engineering and Related Services**

- 600 KAR 6:050. Procurement bulletins and advertisement for selection of professional firms for engineering or related services. (Not Amended After Hearing)
- 600 KAR 6:060. Professional engineering service selection committee. (Not Amended After Hearing)
- 600 KAR 6:080. Financial records and audits of firms. (Amended After Hearing)

**Department of Vehicle Regulation  
Division of Driver Licensing  
Department of Administrative Services**

**Administration**

- 601 KAR 2:020 & E. Drivers' privacy protection. (Amended After Hearing)

**Department of Highways**

**Mass Transportation**

- 603 KAR 7:080E. Human service transportation delivery.

**EDUCATION, ARTS, AND HUMANITIES CABINET  
Kentucky Board of Education  
Department of Education  
Office of District Support Services**

**School Terms, Attendance, and Operation**

- 702 KAR 7:065. Designation of agent to manage high school interscholastic athletics.

**Education Professional Standards Board**

**Board**

- 704 KAR 20:690. Kentucky Teacher Internship program.

**MURRAY STATE UNIVERSITY**

**Board of Regents**

- 772 KAR 1:010. Acquisition and disbursement of funds, accounting system – records and annual report.
- 772 KAR 1:020. Delegation of financial management responsibility.
- 772 KAR 1:030. Annual audit.
- 772 KAR 1:040. Purchase – inventories – sales of surplus property – capital construction procedures.

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

772 KAR 1:050. Issuance of bonds.  
772 KAR 1:060. Fund for excellence.  
772 KAR 1:070. Affiliated corporations.

### WORKFORCE DEVELOPMENT CABINET Department of Vocational Rehabilitation

#### Administration

781 KAR 1:061. Repeal of 781 KAR 1:060.

781 KAR 1:030. Order of selection and economic need test for vocational rehabilitation services.

#### Department for the Blind

#### Blind

782 KAR 1:030. Scope and nature of services.

782 KAR 1:040. Appeal procedures.

#### Kentucky Assistive Technology Loan Corporation

#### Corporation

789 KAR 1:010. General eligibility criteria for assistive technology loans.

### LABOR CABINET

#### Office of Labor Management Relations and Mediation

#### Kentucky Labor Management Matching Grant Program

803 KAR 6:010E. Kentucky Labor Management Matching Grant Program. (Deferred from July)

### PUBLIC PROTECTION AND REGULATION CABINET

#### Department of Insurance

#### Health Insurance Contracts

806 KAR 17:141E. Repeal of 806 KAR 17:140. (Deferred from July)

806 KAR 17:150E. Health benefit plan rate filing requirements. (Deferred from July)

#### Kentucky Racing Commission

#### Thoroughbred Racing (Deferred from June)

810 KAR 1:001. Definitions.

810 KAR 1:009. Jockeys and apprentices.

810 KAR 1:015. Claiming races.

810 KAR 1:016. Running of the race.

#### Harness Racing (Deferred from June)

811 KAR 1:090. Stimulants and drugs.

811 KAR 1:215. Kentucky Standardbred Development Fund.

### CABINET FOR HEALTH SERVICES

#### Department for Public Health

#### Department for Public Health

#### Division of Local Health Department Operations

#### Local Health Departments (Deferred from July)

902 KAR 8:040. Definition of terms applicable for the personnel program for local health departments. (Not Amended After hearing)

902 KAR 8:060. Classification and compensation plans for local health departments of Kentucky. (Amended After Hearing)

902 KAR 8:070. Recruitment, examination, and certification of eligibles for local health departments of Kentucky. (Amended After Hearing)

902 KAR 8:080. Initial appointment, probationary period, layoffs, performance evaluation, and the resignation of employees of local health departments. (Amended After Hearing)

902 KAR 8:090. Promotion, transfer, and demotion of local health department employees. (Not Amended After Hearing)

902 KAR 8:100. Disciplinary procedures applicable for local health department employees. (Amended After Hearing)

902 KAR 8:110. Disciplinary appeal process applicable for local health department employees. (Not Amended After Hearing)

902 KAR 8:120. Leave provisions applicable to employees of local health departments. (Amended After Hearing)

902 KAR 8:130. Participation of local health department employees in political activities. (Not Amended After Hearing)

902 KAR 8:140. Appointment of a health officer or a health department director of a local health department. (Amended After Hearing)

#### Division for Public Health Protection and Safety

#### Milk and Milk Products (Deferred from February)

902 KAR 50:031. Standards for producer eligibility for manufacturing grade milk.

902 KAR 50:032. Standards for farm requirements for manufacturing grade milk.

902 KAR 50:033. Standards for enforcement procedures for manufacturing grade milk.

### CABINET FOR FAMILIES AND CHILDREN

#### Department for Social Insurance

#### Division of Management and Development

#### Public Assistance

904 KAR 2:018E. Transportation services for Kentucky Works.

904 KAR 2:380E. Child Support Enforcement Program application process.

#### Department for Social Services

#### Division of Family Services

#### Day Care

905 KAR 2:160E. Child day care assistance program. (Deferred from July)

**VOLUME 25, NUMBER 2 – AUGUST 1, 1998**

**CABINET FOR HEALTH SERVICES  
Department for Medicaid Services  
Division of Administration and Development**

**Medicaid Services**

- 907 KAR 1:006E. Coverage for persons eligible for Title XVIII benefits. (Deferred from July)
- 907 KAR 1:011E. Technical eligibility requirements. (Deferred from July)
- 907 KAR 1:022E. Nursing facility and intermediate facility for the mentally retarded services. (Deferred from May)
- 907 KAR 1:026E. Dental services. (Deferred from July)
- 907 KAR 1:560E. Medicaid hearing and appeals regarding eligibility. (Deferred from May)
- 907 KAR 1:563E. Medicaid covered services hearing appeals process for recipients. (Deferred from May)
- 907 KAR 1:595. Model Waiver II services and payments. (Public Hearing in June)
- 907 KAR 1:605E. Medicaid procedures for determining initial and continuing eligibility. (Deferred from July)
- 907 KAR 1:626E. Reimbursement of dental services. (Deferred from July)
- 907 KAR 1:640E. Income standards for Medicaid. (Deferred from July)
- 907 KAR 1:645E. Resource standards for Medicaid. (Deferred from July)
- 907 KAR 1:755E. Preadmission screening and resident review (PASRR) program. (Deferred from May)

**Payment and Services**

- 907 KAR 3:030 & E. Coverage and payments for Impact Plus services. (Public Hearing in June)
- 907 KAR 3:065E. Nonemergency medical transportation waiver services and payments.

**Department for Mental Health and Mental Retardation Services**

**Substance Abuse**

- 908 KAR 1:311. Repeal of 908 KAR 1:010, 908 KAR 1:020, 908 KAR 1:030, 908 KAR 1:040, 908 KAR 1:050, 908 KAR 1:060, 908 KAR 1:070, 908 KAR 1:080, 908 KAR 1:090, 908 KAR 1:100, 908 KAR 1:110, 908 KAR 1:120, 908 KAR 1:130, 908 KAR 1:140, 908 KAR 1:150, 908 KAR 1:160, 908 KAR 1:170, 908 KAR 1:180, 908 KAR 1:190, 908 KAR 1:200, 908 KAR 1:210, 908 KAR 1:220, 908 KAR 1:230, 908 KAR 1:240, 908 KAR 1:250, and 908 KAR 1:260. (Deferred from July)
- 908 KAR 1:370. Licensing procedures and standards for persons and agencies operating alcohol and other drug abuse treatment programs. (Amended After Hearing)

**Mental Health**

- 908 KAR 2:210E. Domestic violence offender treatment certification standards. (Deferred from June)

VOLUME 25, NUMBER 2 – AUGUST 1, 1998

ADMINISTRATIVE REGULATION REVIEW PROCEDURE  
(See KRS Chapter 13A for specific provisions)

**Notice of Intent**

Administrative bodies shall file with the Regulations Compiler a Notice of Intent to promulgate an administrative regulation, including date, time and place of a public hearing on the subject matter to which the administrative regulation applies. This Notice of Intent, along with the public hearing information, shall be published in the Administrative Register. This Notice has to be filed and published in the Administrative Register, and the public hearing held or cancelled, prior to the filing of an administrative regulation.

After the scheduled hearing date, if held, the administrative body shall file with the Regulations Compiler a Statement of Consideration, setting forth a summary of the comments made at the public hearing, and the responses by the administrative body. This Statement shall not be published in the Administrative Register.

**Filing and Publication**

Administrative bodies shall file with the Regulations Compiler all proposed administrative regulations, public hearing information, tiering statement, regulatory impact analysis, fiscal note, and the federal mandate comparison. Those administrative regulations received by the deadline required in KRS 13A.050 shall be published in the Administrative Register.

**Public Hearing**

The administrative body shall schedule a public hearing on proposed administrative regulations to be held not less than twenty (20) nor more than thirty (30) days following publication. The time, date, and place of the hearing and the name and address of the agency contact person shall be included on the last page of the administrative regulation when filed with the Compiler's office.

Any person interested in attending the scheduled hearing must submit written notification of such to the administrative body at least five working (5) days before the scheduled hearing. If no written notice is received at least five (5) working days before the hearing, the administrative body may cancel the hearing.

If the hearing is cancelled, the administrative body shall notify the Compiler of the cancellation. If the hearing is held, the administrative body shall submit within fifteen (15) days following the hearing a statement of consideration summarizing the comments received at the hearing and the administrative body's responses to the comments.

No transcript of the hearing need to be taken unless a written request for a transcript is made, and the person requesting the transcript shall have the responsibility of paying for same. A recording may be made in lieu of a transcript.

**Review Procedure**

If a proposed administrative regulation is amended as a result of the public hearing, the amended version shall be published in the next Administrative Register; and the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting following publication. If a proposed administrative regulation is not amended as a result of the hearing or if the hearing is cancelled, the administrative regulation shall be reviewed by the Administrative Regulation Review Subcommittee at its next meeting. After review by the Subcommittee, the administrative regulation shall be referred by the Legislative Research Commission to an appropriate jurisdictional committee for a second review. The administrative regulation shall be considered as adopted and in effect as of adjournment on the day the appropriate jurisdictional committee meets or thirty (30) days after being referred by LRC, whichever occurs first.

VOLUME 25, NUMBER 2 – AUGUST 1, 1998

NOTICES OF INTENT TO PROMULGATE ADMINISTRATIVE REGULATIONS  
RECEIVED AS OF NOON, JULY 15, 1998

KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY

June 26, 1997

(1) The subject matter of the administrative regulation is **11 KAR 5:130**, Student application.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an amendment to Section 1 of the administrative regulation governing the subject matter listed above, particularly, the process by which a student may apply for a KHEAA Grant.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Friday, August 21, 1998, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held, if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, Facsimile number 696-7293.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Kentucky Higher Education Assistance Authority at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to application for a KHEAA Grant is KRS 164.744(2), 164.746(6), 164.753(4), 164.7535, 164.780 and 164.785.

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will amend an existing administrative regulation, 11 KAR 5:130, as follows: Section 1 of the above cited administrative regulation currently requires a student to complete and submit, in accordance with the instructions provided, the 1998-99 Free Application for Federal Student Aid (FAFSA). The Kentucky Higher Education Assistance Authority intends to amend that section of the administrative regulation to require the submission of the 1999-2000 Free Application for Federal Student Aid (FAFSA) to award grants for the upcoming 1999-2000 academic year.

(c) The necessity and function of the proposed administrative regulation is as follows: The proposed amendment is necessary to update the version of the Free Application for Federal Student Aid (FAFSA) that is used for the KHEAA grant programs, consistent with its use for other programs of student financial assistance.

(d) The benefits expected from the administrative regulation are: The student can use a single application form for KHEAA grants and institutional and federal programs of student financial assistance at no processing cost to the student.

(e) The administrative regulation will be implemented as follows: The administrative regulation will require that a student complete and submit in accordance with the instructions provided the 1999-2000 Free Application for Federal Student Aid (FAFSA) in order to be considered for a KHEAA Grant.

June 26, 1997

(1) The subject matter of the administrative regulation is **11 KAR 8:030**, Teacher scholarships.

(2) The Kentucky Higher Education Assistance Authority intends to promulgate an amendment to Section 3 of the administrative regulation governing the subject matter listed above, particularly, the maximum scholarship awards based upon academic classification (freshman, sophomore, junior, senior, and graduate).

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Friday, August 21, 1998, at 10 a.m., at 1050 U.S. 127 South, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held, if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, Facsimile number 696-7293.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Kentucky Higher Education Assistance Authority at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to teacher scholarships is KRS 164.748(4), 164.753(3), 164.769(5), (6)(f).

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

(b) The administrative regulation that the Kentucky Higher Education Assistance Authority intends to promulgate will amend an existing administrative regulation, 11 KAR 8:030, as follows: Section 3(1) of the above cited administrative regulation currently establishes the maximum scholarship amount as \$5,000 (exclusive of a summer session) for an academic year; \$2,500 for a semester; and \$1,250 for a summer session. The Kentucky Higher Education Assistance Authority intends to amend that section of the administrative regulation by retaining those maximum awards for students classified as a junior, senior, postbaccalaureate, or graduate but establishing separate limits of \$1,250 (exclusive of a summer session) for an academic year; \$625 for a semester; and \$1,250 for a summer session for students classified as a freshman or sophomore.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 164.744(2) authorizes the authority to provide scholarships, and KRS 164.753(3) prescribes certain standards for scholarship programs. KRS 164.769 establishes a teacher scholarship program and requires the Kentucky Higher Education Assistance Authority to establish the terms and conditions for the award, cancellation, and repayment of teacher scholarship, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority. This administrative regulation delineates selection criteria, disbursement procedures, cancellation of repayment procedures, and repayment obligations related to scholarships provided under the program. The proposed amendment is a necessary change since the aggregate maximum for undergraduates is \$12,500 and freshmen and sophomores would exhaust funding before completing the teacher education program if allowed to receive up to \$5,000 each year.

(d) The benefits expected from the administrative regulation are: This administrative regulation delineates selection criteria, disbursement procedures, cancellation of repayment procedures, repayment obligations and award maximums for each academic year, semester, and summer session related to scholarships provided under the program.

(e) The administrative regulation will be implemented as follows: The administrative regulation establishes the terms and conditions for the award, cancellation, and repayment of teacher scholarship, awarded under KRS 164.769 and under prior teacher scholarship programs administered by the Kentucky Higher Education Assistance Authority.

### DEPARTMENT OF STATE Registry of Election Finance

July 6, 1998

(1) **32 KAR 2:050**, Conciliation.

(2) The Kentucky Registry of Election Finance intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 28, 1998, at 9:30 a.m., at 140 Walnut Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and
2. A minimum of five (5) persons, or the administrative body or association agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least five (5) days prior to August 28, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: 140 Walnut Street, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. I agree to attend the public hearing; or
2. I will not attend the public hearing.

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Registry of Election Finance at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to conciliation procedures is KRS 121.120(1)(g).

(b) The administrative regulation that the Registry of Election Finance intends to promulgate will replace 32 KAR 2:050.

(c) The necessity and function of the proposed administrative regulation is as follows:

1. The purpose of this administrative regulation is to establish a conciliation procedure as required by KRS 121.140. It is necessary to promulgate this administrative regulation to enable the registry to comply with 1992 Ky. Acts ch. 288 sec. 46, which became effective July 14, 1992.

2. The purpose of the amendment to this regulation is to create an incentive for candidates and their treasurers to attend the training sessions conducted by the registry under KRS 121.130(1). It is necessary to promulgate this amendment to enable the registry to encourage voluntary participation in the training sessions, in an effort to maximize the dissemination of information to candidates, treasurers, depositories and the general public, as required under KRS 121.130(1).

(d) The benefits expected from this administrative regulation are: Increased participation and attendance for training sessions sponsored by the Registry of Election Finance; decreased violations based on inexperience or ignorance of campaign finance laws and regulations.

(e) The administrative regulation will be implemented as follows: The General Counsel for the Registry of Election Finance will coordinate the implementation of this regulation.

### KENTUCKY RETIREMENT SYSTEMS

May 22, 1998

(1) **105 KAR 1:170**, Membership form requirements.

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for August 21, 1998, at 9 a.m. Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be cancelled.

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Pamala S. Johnson, General Manager, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601-6124.

(b) On request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Kentucky Retirement Systems at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the Kentucky Employees Retirement System, County Employees Retirement System and State Police Retirement System is 26 USC 401(a) and KRS 61.645(9)(f).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will amend 105 KAR 1:170. Section 5 provides the form for requesting a refund of contributions in accordance with KRS 61.625. The proposed amendment will prohibit the refund of a member account to a member who has not terminated employment.

(c) The necessity and function of the proposed administrative regulation is as follows: In order to adhere to the provisions of 26 USC 401(a), a plan may not allow distributions from the pension plan before normal retirement age to members of the plan prior to separation from service. KRS 61.625, amended by 1998 Ky. Acts ch. 105, sec. 14, allows refunds prior to separation from service. The purpose of this regulation is to clarify that no refund will be issued unless there has been a separation from service.

(d) The benefits expected from the administrative regulation are: Continued qualification of Kentucky Employees Retirement System, County Employees Retirement System and State Police Retirement System is essential to retain tax exempt status of the more than \$10 billion in invested assets and the tax deferred status on employee contributions.

(e) The administrative regulation will be implemented as follows: Members who have not had a separation of service but who submit a request for refund will be informed that no refund may be issued prior to separation of service and that they may reapply for the refund once a separation of service has occurred.

May 22, 1998

(1) **105 KAR 1:230.** Reemployment after retirement.

(2) Kentucky Retirement Systems intends to promulgate an administrative regulation governing the subject matter above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for August 21, 1998, at 9 a.m., at Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Pamala S. Johnson, General Manager, Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky 40601-6124.

(b) On request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Kentucky Retirement Systems at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the Kentucky Employees Retirement System, County Employees Retirement System and State Police Retirement System is 26 USC 401(a) and KRS 61.645(9)(f).

(b) The administrative regulation that the Kentucky Retirement Systems intends to promulgate will amend 105 KAR 1:230 which regulates reemployment after retirement.

(c) The necessity and function of the proposed administrative regulation is as follows: 1998 Ky. Acts ch. 105, sec. 28 and 1998 Ky. Acts ch. 75 amend KRS 61.637 which governs the rights and responsibilities of retired members who return to employment within the same system from which they retired. Specifically, these bills allow members to return to work within the same system from which they retired and continue to draw their retirement benefit. In order to remain a qualified pension plan under 26 USC 401(a), the retirement plan cannot pay benefits to an individual before normal retirement age unless a separation from service has occurred. To address the federal requirements contained in Section 401(a) of the Internal Revenue Code with the intent of providing that a bona fide separation from service has occurred, the system will specify a minimum period following separation of service that a member must be receiving benefits before he can return to employment in the same system and with the same employer.

(d) The benefits expected from the administrative regulation are: Continued qualification of Kentucky Employees Retirement System, County Employees Retirement System and State Police Retirement System is essential to retain tax exempt status of the more than \$10 billion in invested assets and the tax deferred status on employee contributions.

(e) The administrative regulation will be implemented as follows: Members will be required to be a retired member not contributing to the same system from which he retired for a specific period of time before accepting further employment. If a member returns to work prior to the specified period, his retirement will either be voided or his payments suspended depending on the employment accepted.

## FINANCE AND ADMINISTRATION CABINET

July 15, 1998

(1) **200 KAR 6:060.** Lease of new construction.

(2) The Finance and Administration Cabinet intends to promulgate the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 25, 1998, at 9 a.m. in Room 386, Capital Annex, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
2. A minimum of five persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

**VOLUME 25, NUMBER 2 – AUGUST 1, 1998**

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten (10) calendar days prior to August 25, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Jim Abbott, Director, Division of Real Properties, Finance and Administration Cabinet, Bush Building, 3rd Floor, 403 Wapping Street, Frankfort, Kentucky 40601, Phone: (502)564-2205, FAX (502) 564-8108.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file the request may obtain a request form from the Office of the Secretary at the following address: Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374 Capitol Annex, Frankfort, Kentucky 40601.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of the above-cited administrative regulation is contained in KRS 56.463(2), (8), and HB 704.

(b) The proposed regulation will set minimum requirements for documentation to be submitted with a proposal for lease of new construction pursuant to KRS 56.803.

(c) The necessity and function of the proposed administrative regulation is as follows: HB 704 requires proposed new construction to be considered in state procurement of leased office space pursuant to KRS 56.803 without going through the build-to-suit process, so long as the proposed new construction does not contain provision for a lease-purchase or an option to purchase by the state. This administrative regulation is necessary in order to set minimum requirement for documentation to be submitted with a proposal for lease of new construction.

(d) The benefit expected from this proposed administrative regulation is to eliminate potential controversy and clarify requirements of persons proposing new construction for lease by the Commonwealth.

(e) This administrative regulation will be implemented by considering proposals to lease new construction upon submission of appropriate documentation as outlined in the regulation.

**Kentucky Kare Health Insurance Authority**

July 14, 1998

(1) New regulation: **200 KAR 26:010**. Definitions for 200 KAR 26:020.

(2) The Kentucky Kare Health Insurance Authority intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday, August 31, 1998, at 9:30 a.m., at the office of the Kentucky Kare Health Insurance Authority, 23 Millcreek Park, Building 2, Frankfort, Kentucky, 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body or association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agrees, in writing to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 calendar days prior to August 31, 1998, the public hearing will be cancelled.

(5)(a) Person wishing to request a public hearing should mail their written request to: James W. Utter, Attorney, Kentucky Kare Health Insurance Authority, 23 Millcreek Park, Building 2, Frankfort, Kentucky 40601, Telephone number (502) 573-1707, Facsimile Number (502) 573-1711.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Kentucky Kare Health Insurance Authority at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of the administrative regulation is 98 HB 340 Section 8.

(b) The administrative regulation that the Kentucky Kare Health Insurance Authority intends to promulgate will not amend an existing administrative regulation. It will establish definitions for a medical fee schedule for physicians for medical services performed for person enrolled under the Kentucky Kare Plans.

(c) The necessity and function of the proposed administrative regulation is as follows: "Provides that the Kentucky Kare Health Insurance Authority shall promulgate administrative regulations with regard to the administration of the fund; promulgate administrative regulations governing the conditions under which an employee may participate in or withdraw from the fund, and the procedure by which an employee is to contribute to the fund; promulgate administrative regulations to ensure that the fund is actuarially sound; promulgate administrative regulations to ensure the integrity of the fund to ensure that the fund be used solely for the purposes specific to this section;" "(g) Promulgate administrative regulations for the operation of the authority;..." Copies of the regulation will be mailed to physicians located in the Commonwealth of Kentucky from the records of Kentucky Kare Health Insurance Authority, and members of the Kentucky Medical Association, and will be made available for inspection and copying at offices of Kentucky Kare Health Insurance Authority.

(d) The benefits expected from administrative regulation are: The Kentucky Kare Health Insurance Authority is establishing definitions for a uniform reimbursement schedule for physicians within the Commonwealth.

(e) The administrative regulation will be implemented as follows: The definitions will be provided to the third-party administrator who will apply the fee schedule to all physicians' and services incurred on or after the effective date of the regulation.

July 14, 1998

(1) New regulation: **200 KAR 26:020**. Kentucky Kare medical fee schedule for physicians.

(2) The Kentucky Kare Health Insurance Authority intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for Monday,



## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

August 31, 1998, at 9:30 a.m., at the office of the Kentucky Kare Health Insurance Authority, 23 Millcreek Park, Building 2, Frankfort, Kentucky, 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body or association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agrees, in writing to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 31, 1998, the public hearing will be cancelled.

(5)(a) Person wishing to request a public hearing should mail their written request to: James W. Utter, Attorney, Kentucky Kare Health Insurance Authority, 23 Millcreek Park, Building 2, Frankfort, Kentucky 40601, Telephone Number (502) 573-1707, Facsimile Number (502) 573-1711.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Kentucky Kare Health Insurance Authority at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of the administrative regulation is 98 HB 340 Section 8.

(b) The administrative regulation that the Kentucky Kare Health Insurance Authority intends to promulgate will not amend an existing administrative regulation. It will establish a medical fee schedule for physicians for medical services performed for person enrolled under the Kentucky Kare Plans and not allow the practice of unbundling claims and not allow medical practitioners to balance bill persons covered by the Kentucky Kare Plans for services in excess of the medical fee schedule.

(c) The necessity and function of the proposed administrative regulation is as follows: "Provides that the Kentucky Kare Health Insurance Authority shall promulgate administrative regulations with regard to the administration of the fund; promulgate administrative regulations governing the conditions under which an employee may participate in or withdraw from the fund, and the procedure by which an employee is to contribute to the fund; promulgate administrative regulations to ensure that the fund is actuarially sound; promulgate administrative regulations to ensure the integrity of the fund to ensure that the fund be used solely for the purposes specific to this section;" "(g) promulgate administrative regulations for the operation of the authority;". Copies of the regulation will be mailed to physicians located in the Commonwealth of Kentucky from the records of Kentucky Kare Health Insurance Authority, and members of the Kentucky Medical Association, and will be made available for inspection and copying at offices of Kentucky Kare Health Insurance Authority.

(d) The benefits expected from administrative regulation are: The Kentucky Kare Health Insurance Authority is establishing a uniform reimbursement schedule for physicians within the Commonwealth. Person who have their health insurance through Kentucky Kare will not be subject to physicians "balance billing" the portion of their fee not covered by the fee schedule to the covered person.

(e) The administrative regulation will be implemented as follows: The fee schedule will be provided to the third-party administrator who will apply the fee schedule to all physicians' and services incurred on or after the effective date of the regulation.

## BOARD OF PHARMACY

July 8, 1998

1) **201 KAR 2:015.** Continuing education.

(2) The Kentucky Board of Pharmacy intends to amend an administrative regulation, 201 KAR 2:015 relating to continuing education and the process by which providers conduct continuing education sessions.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 26, 1998 at 9 a.m. local prevailing time, at 1024 Capital Center Drive, Suite 210-Board Room, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 26, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Board of Pharmacy, 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Board of Pharmacy at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to continuing education is found at KRS 315.191(1)(a).

(b) The amendment to the administrative regulation that the Board of Pharmacy intends to promulgate will address the manner by which a provider of continuing education receives program approval and further defines the type of continuing education required by the statute.

(c) The necessity, function, and conformity of the proposed amendment to the administrative regulation is as follows: KRS 315.065 and 315.191(1)(a) authorize and require the Board of Pharmacy to promulgate administrative regulations to establish the parameters by which program approval shall be granted and to set forth the minimum requirements of courses to be completed to maintain a license to practice the profession of pharmacy.

(d) The benefit expected from the amendment to the administrative regulation is a greater certainty that the provider will meet minimum standards and the pharmacist will be informed of changes in pharmacy and drug law within the Commonwealth.

(e) The amendment to the administrative regulation will be implemented as follows: The board proposes to clarify the method of approval of providers of continuing education and the type of continuing education required for license renewal.

(8) Any person with a disability for which the Board of Pharmacy needs to make an accommodation in order for the person to participate in

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

the public comment hearing should notify Michael A. Moné at the above-mentioned address no later than August 12, 1998.

July 8, 1998

- (1) **201 KAR 2:030.** Reciprocity; temporary license.
- (2) The Kentucky Board of Pharmacy intends to amend an administrative regulation, 201 KAR 2:030 relating to the method by which a pharmacist may obtain a license in the Commonwealth through license transfer.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 26, 1998 at 9:30 a.m. local prevailing time, at 1024 Capital Center Drive, Suite 210-Board Room, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 26, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Board of Pharmacy, 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Board of Pharmacy at the address listed above.
- (7) Information relating to the proposed administrative regulation.
  - (a) The statutory authority for the promulgation of an administrative regulation relating to methods by which a pharmacist may obtain licensure by license transfer is found at KRS 315.210 and 315.191(1)(a).
  - (b) The amendment to the administrative regulation that the Board of Pharmacy intends to promulgate will conform its language to the current technology for the use of the Multistate Pharmacy Jurisprudence Examination and requirements of continuing education in pharmacy and drug laws affecting the practice of the profession of pharmacy in the Commonwealth.
  - (c) The necessity, function, and conformity of the proposed amendment to the administrative regulation is as follows: KRS 315.210 authorizes the Board of Pharmacy to promulgate administrative regulations to establish the method by which a pharmacist may obtain a license to practice the profession of pharmacy in the Commonwealth through an exchange of a license from another jurisdiction.
  - (d) The benefit expected from the amendment to the administrative regulation is a greater clarity with current technology with the adoption of the use of the Multistate Pharmacy Jurisprudence Examination.
  - (e) The amendment to the administrative regulation will be implemented as follows: The board proposes to require the successful passage of the Multistate Pharmacy Jurisprudence Examination instead of the current board member interview and examination.
- (8) Any person with a disability for which the Board of Pharmacy needs to make an accommodation in order for the person to participate in the public comment hearing should notify Michael A. Moné at the above-mentioned address no later than August 12, 1998.

July 8, 1998

- (1) **201 KAR 2:040.** Registration of interns.
- (2) The Kentucky Board of Pharmacy intends to amend an administrative regulation, 201 KAR 2:040 relating to the registration of interns.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 26, 1998 at 10 a.m. local prevailing time, at 1024 Capital Center Drive, Suite 210-Board Room, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 26, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Board of Pharmacy, 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Board of Pharmacy at the address listed above.
- (7) Information relating to the proposed administrative regulation.
  - (a) The statutory authority for the promulgation of an administrative regulation relating to continuing education is found at KRS 315.191(1)(a).
  - (b) The amendment to the administrative regulation that the Board of Pharmacy intends to promulgate will address the manner by which an intern becomes eligible for registration and the criteria by which preceptors will be accepted to educate interns.
  - (c) The necessity, function, and conformity of the proposed amendment to the administrative regulation is as follows: KRS 315.050 and 315.191(1)(a) authorize and require the Board of Pharmacy to promulgate administrative regulations to establish the parameters by which interns receive practical pharmacy experiences and the criteria for the preceptors who educate the interns.
  - (d) The benefit expected from the amendment to the administrative regulation is a greater certainty that an intern will receive appropriate practical education and that the preceptor will have the facility within which to provide the intern with a valuable educational experience.
  - (e) The amendment to the administrative regulation will be implemented as follows: The board proposes to change the initial criteria for the issuance of the intern certificate and to establish the minimum criteria for the awarding of hours of internship.
- (8) Any person with a disability for which the Board of Pharmacy needs to make an accommodation in order for the person to participate in the public comment hearing should notify Michael A. Moné at the above-mentioned address no later than August 12, 1998.

July 8, 1998

- (1) **201 KAR 2:050.** Licenses and permits; fees.
- (2) The Kentucky Board of Pharmacy intends to amend an administrative regulation, 201 KAR 2:050 relating to licensees and permit fees.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 26,

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

1998 at 10:30 a.m. local prevailing time, at 1024 Capital Center Drive, Suite 210-Board Room, Frankfort, Kentucky 40601.

- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 26, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Board of Pharmacy, 1024 Capital Center Drive, Suite 210, Frankfort, Kentucky 40601.
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Board of Pharmacy at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to continuing education is found at KRS 315.191(1)(a).
- (b) The amendment to the administrative regulation that the Board of Pharmacy intends to promulgate will address the matter of the fees associated with the operation of the Board of Pharmacy.
- (c) The necessity, function, and conformity of the proposed amendment to the administrative regulation is as follows: 315.191(1)(a) and the various individual sections of KRS Chapter 315 authorize and require the Board of Pharmacy to promulgate administrative regulations to establish the fees associated with the operation of the Board of Pharmacy for issuance and renewal of permits and licenses.
- (d) The benefit expected from the amendment to the administrative regulation is a greater clarity to conform to changes made by the board office and to provide for fees that were inadvertently omitted.
- (e) The amendment to the administrative regulation will be implemented as follows: The board proposes to change the fees associated with the application for license transfer; to conform the intern license to six years to be equal with the educational sequence of a student at a college or school of pharmacy; to include a delinquent renewal penalty for a permit to operate as a drug wholesaler or manufacturer and to establish the continuing education provider status fee.
- (b) Any person with a disability for which the Board of Pharmacy needs to make an accommodation in order for the person to participate in the public comment hearing should notify Michael A. Moné at the above-mentioned address no later than August 12, 1998.

### KENTUCKY BOARD OF CERTIFICATION OF ALCOHOL AND DRUG COUNSELORS

July 10, 1998

- (1) **201 KAR 35:020.** Continuing education requirements.
- (2) The Kentucky Board of Certification of Alcohol and Drug Counselors intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 25, 1998, at 11 a.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to August 25, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Kentucky Board of Certification of Alcohol and Drug Counselors at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to continuing education requirements is KRS 309.0813(2) and 309.085(1)(b).
- (b) The administrative regulation that the board intends to promulgate will establish the requirements for continuing education.
- (c) The necessity, conformity, and function of the proposed administrative regulation is as follows: KRS 309.085(1)(b) authorizes the board to promulgate an administrative regulation requiring a certified alcohol and drug counselor to complete continuing education requirements as a condition of renewal of his certification. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.
- (d) The benefits expected from administrative regulation are: The certificands will know more about the requirements regarding continuing education.
- (e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented as soon as it becomes effective.

July 10, 1998

- (1) **201 KAR 35:030.** Code of ethics.
- (2) The Kentucky Board of Certification of Alcohol and Drug Counselors intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 25, 1998, at 11 a.m., at the Division of Occupations and Professions, Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:

**VOLUME 25, NUMBER 2 – AUGUST 1, 1998**

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to August 25, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Kentucky Board of Certification of Alcohol and Drug Counselors at the address listed above.
- (7) Information relating to the proposed administrative regulation.
  - (a) The statutory authority for the promulgation of an administrative regulation relating to code of ethics is KRS 309.0813(2).
  - (b) The administrative regulation that the board intends to promulgate will establish the code of ethics.
  - (c) The necessity, conformity, and function of the proposed administrative regulation is as follows: KRS 309.0813(2) authorizes the board to promulgate an administrative regulation establishing a code of ethics governing the activities of a certified alcohol and drug counselor. This administrative regulation establishes the required code of ethics.
  - (d) The benefits expected from administrative regulation are: The certificands will know the requirements in the code of ethics.
  - (e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented as soon as it becomes effective.

**PUBLIC PROTECTION AND REGULATION CABINET  
Office of the Petroleum Storage Tank Environmental Assurance Fund**

July 6, 1998

- (1) **415 KAR 1:050.** Definitions. The subject matter of the proposed amended administrative regulation is the definitions required by 415 KAR Chapter 1.
- (2) The Office of the Petroleum Storage Tank Environmental Assurance Fund intends to promulgate an amended administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998, at 1:30 p.m. at the Petroleum Storage Tank Environmental Assurance Fund Commission offices at 911 Leawood Drive, Frankfort, Kentucky in the second floor conference room.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 people, or by an administrative body, or association, having at least 5 members; and
  2. A minimum of 5 persons, or an administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If the request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to: David B. Wicker, Staff Counsel, 911 Leawood Drive, Frankfort, Kentucky 40601, Telephone (502) 564-5981, Fax (502) 564-0094.
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Office of the Petroleum Storage Tank Environmental Assurance Fund at the above address.
- (7) Information relating to the proposed administrative regulation.
  - (a) The statutory authority for the promulgation of an administrative regulation relating to definitions is found in KRS 224.60-130.
  - (b) The administrative regulation that the commission intends to promulgate will amend the definitions used in this chapter.
  - (c) The necessity and function of the proposed amended administrative regulation is as follows: The regulation provides needed definitions for the chapter. HB 282 (1998) amended certain definitions in the regulation. The amendment will conform with the statutory changes and reorganization made in HB 282 (1998).
  - (d) The benefit expected from the administrative regulation is to lessen the confusion of the regulated community by providing clear and consistent definitions.
  - (e) The regulation will be implemented upon passage.

July 6, 1998

- (1) **415 KAR 1:060.** Financial responsibility account. The subject matter of the proposed amended administrative regulation is the requirements and conditions for the participation in the Fund's Financial Responsibility Account.
- (2) The Office of the Petroleum Storage Tank Environmental Assurance Fund intends to promulgate an amended administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998, at 1:30 p.m. at the Petroleum Storage Tank Environmental Assurance Fund Commission offices at 911 Leawood Drive, Frankfort, Kentucky in the second floor conference room.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 people, or by an administrative body, or association, having at least 5 members; and
  2. A minimum of 5 persons, or an administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If the request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to: David B. Wicker, Staff Counsel, 911 Leawood Drive, Frankfort, Kentucky 40601, Telephone (502) 564-5981, Fax (502) 564-0094.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Office of the Petroleum Storage Tank Environmental Assurance Fund at the above address.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Financial Responsibility Account is found in KRS 224.60-130.

(b) The administrative regulation that the commission intends to promulgate will amend 415 KAR 1:060. The amendments will conform to the statutory changes resulting from HB 282 (1998), specifically, lowering the entry levels, allowing a return of a portion of the entry level if corrective action is completed in a timely fashion, and adding a prohibition for providing the commission with false information. Also, the commission minimum balance will be raised.

(c) The necessity and function of the proposed amended administrative regulation is as follows: The amendment will conform with the statutory changes and reorganization made in HB 282 (1998) and the requirements of KRS 224.60-130. The amendments will encourage more participation by reducing the burden on the applicant and protecting the commission from fraudulent submittals.

(d) The benefit expected from the administrative regulation is to reduce the cost to the applicant and protect the commission from fraudulent claims against the financial responsibility account.

(e) The regulation will be implemented by making the new entry levels available as soon as possible. The remainder of the regulation will be implemented upon passage.

July 6, 1998

(1) **415 KAR 1:070.** Petroleum Storage Tank Account. The subject matter of the proposed amended administrative regulation is the requirements and conditions for the participation in the Fund's Petroleum Storage Tank Account.

(2) The Office of the Petroleum Storage Tank Environmental Assurance Fund intends to promulgate an amended administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998, at 1:30 p.m. at the Petroleum Storage Tank Environmental Assurance Fund Commission offices at 911 Leawood Drive, Frankfort, Kentucky in the second floor conference room.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 people, or by an administrative body, or association, having at least 5 members; and
2. A minimum of 5 persons, or an administrative body or association, agree, in writing, to be present at the public hearing.

(b) If the request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: David B. Wicker, Staff Counsel, 911 Leawood Drive, Frankfort, Kentucky 40601, Telephone (502) 564-5981, Fax (502) 564-0094.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Office of the Petroleum Storage Tank Environmental Assurance Fund at the above address.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Petroleum Storage Tank Account is found in KRS 224.60-130.

(b) The administrative regulation that the commission intends to promulgate will amend 415 KAR 1:070. The amendments will conform to the statutory changes resulting from HB 282 (1998), specifically, lowering the entry levels, allowing a return of a portion of the entry level if corrective action is completed in a timely fashion, and adding a prohibition for providing the commission with false information.

(c) The necessity and function of the proposed amended administrative regulation is as follows: The amendment will conform with the statutory changes and reorganization made in HB 282 (1998) and the requirements of KRS 224.60-130. The amendments will encourage more participation by reducing the burden on the applicant and protecting the commission from fraud.

(d) The benefit expected from the administrative regulation is to reduce the cost to the applicant and protect the commission from fraudulent claims against the Petroleum Storage Tank Account.

(e) The regulation will be implemented by making the new entry levels available as soon as possible. The remainder of the regulation will be implemented upon passage.

July 6, 1998

(1) **415 KAR 1:080.** Claims procedure. The subject matter of the proposed amended administrative regulation is the requirements and conditions for the processing and payment of claims by the commission.

(2) The Office of the Petroleum Storage Tank Environmental Assurance Fund intends to promulgate an amended administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998, at 1:30 p.m. at the Petroleum Storage Tank Environmental Assurance Fund Commission offices at 911 Leawood Drive, Frankfort, Kentucky in the second floor conference room.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 people, or by an administrative body, or association, having at least 5 members; and
2. A minimum of 5 persons, or an administrative body or association, agree, in writing, to be present at the public hearing.

(b) If the request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: David B. Wicker, Staff Counsel, 911 Leawood Drive, Frankfort, Kentucky 40601, Telephone (502) 564-5981, Fax (502) 564-0094.

(b) On a request for public hearing, a person shall state:

VOLUME 25, NUMBER 2 – AUGUST 1, 1998

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Office of the Petroleum Storage Tank Environmental Assurance Fund at the above address.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the payment of claims is found in KRS 224.60-130.

(b) The administrative regulation that the commission intends to promulgate will amend 415 KAR 1:080. The amendments will conform to the statutory changes resulting from HB 282 (1998), specifically, the procedure for field audits, the prior approval of certain activities, and the prohibition of paying for tank removals.

(c) The necessity and function of the proposed amended administrative regulation is as follows: The amendment will conform with the statutory changes and reorganization made in HB 282 (1998) and the requirements of KRS 224.60-130. The amendments will reduce unnecessary cost to the commission and reduce the incentive for fraud.

(d) The benefit expected from the administrative regulation is to reduce the cost of corrective action by increased oversight and prior approval of cost and to protect the commission from fraudulent claims.

(e) The regulation will be implemented upon passage.

July 6, 1998

(1) **415 KAR 1:090**, Ranking system. The subject matter of the proposed amended administrative regulation is the method by which petroleum storage tank account applicants are priority ranked.

(2) The Office of the Petroleum Storage Tank Environmental Assurance Fund intends to promulgate an amended administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998, at 1:30 p.m. at the Petroleum Storage Tank Environmental Assurance Fund Commission offices at 911 Leawood Drive, Frankfort, Kentucky in the second floor conference room.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 people, or by an administrative body, or association, having at least 5 members; and
2. A minimum of 5 persons, or an administrative body or association, agree, in writing, to be present at the public hearing.

(b) If the request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: David B. Wicker, Staff Counsel, 911 Leawood Drive, Frankfort, Kentucky 40601, Telephone (502) 564-5981, Fax (502) 564-0094.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Office of the Petroleum Storage Tank Environmental Assurance Fund at the above address.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the payment of claims is found in KRS 224.60-130.

(b) The administrative regulation that the commission intends to promulgate will amend 415 KAR 1:090. The amendments will conform to the statutory changes resulting from HB 282 (1998) and will insure that organizational branches of the executive branch are not paid before citizens of the Commonwealth.

(c) The necessity and function of the proposed amended administrative regulation is as follows: The amendment will conform with the statutory changes and reorganization made in HB 282 (1998) and prevent the organizational units of the executive branch from taking priority for payment from citizens of the Commonwealth.

(d) The benefit expected from the administrative regulation is to ensure the protection of commission monies for the citizens of the Commonwealth.

(e) The regulation will be implemented upon passage.

July 6, 1998

(1) **415 KAR 1:100**, Third party claims. The subject matter of the proposed amended administrative regulation is the requirements and procedures for the payment of third party claims.

(2) The Office of the Petroleum Storage Tank Environmental Assurance Fund intends to promulgate an amended administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998, at 1:30 p.m. at the Petroleum Storage Tank Environmental Assurance Fund Commission offices at 911 Leawood Drive, Frankfort, Kentucky in the second floor conference room.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 people, or by an administrative body, or association, having at least 5 members; and
2. A minimum of 5 persons, or an administrative body or association, agree, in writing, to be present at the public hearing.

(b) If the request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: David B. Wicker, Staff Counsel, 911 Leawood Drive, Frankfort, Kentucky 40601, Telephone (502) 564-5981, Fax (502) 564-0094.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

VOLUME 25, NUMBER 2 – AUGUST 1, 1998

(b) Persons who wish to file this request may obtain a request form from the Office of the Petroleum Storage Tank Environmental Assurance Fund at the above address.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the payment of third party claims is found in KRS 224.60-130.

(b) The administrative regulation that the commission intends to promulgate will amend 415 KAR 1:100. The amendments will conform to the statutory changes resulting from HB 282 (1998).

(c) The necessity and function of the proposed amended administrative regulation is as follows: The amendment will conform with the statutory changes and reorganization made in HB 282 (1998).

(d) The benefit expected from the administrative regulation is to achieve consistency with the authorizing statute.

(e) The regulation will be implemented upon passage.

July 6, 1998

(1) **415 KAR 1:110**, Contractor costs. The subject matter of the proposed amended administrative regulation is the level of reimbursement allowed for corrective action activities.

(2) The Office of the Petroleum Storage Tank Environmental Assurance Fund intends to promulgate an amended administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998, at 1:30 p.m. at the Petroleum Storage Tank Environmental Assurance Fund Commission offices at 911 Leawood Drive, Frankfort, Kentucky in the second floor conference room.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 people, or by an administrative body, or association, having at least 5 members; and

2. A minimum of 5 persons, or an administrative body or association, agree, in writing, to be present at the public hearing.

(b) If the request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: David B. Wicker, Staff Counsel, 911 Leawood Drive, Frankfort, Kentucky 40601, Telephone (502) 564-5981, Fax (502) 564-0094.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Office of the Petroleum Storage Tank Environmental Assurance Fund at the above address.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to contractor costs is found in KRS 224.60-130.

(b) The administrative regulation that the commission intends to promulgate will amend 415 KAR 1:110. The amendments will conform to the statutory changes resulting from HB 282 (1998), the annual review required in the regulation, and updates to cost required by the changes in contractor's operating methods.

(c) The necessity and function of the proposed amended administrative regulation is as follows: The amendment will conform with the statutory changes and reorganization made in HB 282 (1998), the annual review required in the regulation, and updates to cost required by the changes in contractor's operating methods.

(d) The benefit expected from the administrative regulation is to allow realistic rates of reimbursement to contractors while still maintaining reasonable expense to the state.

(e) The regulation will be implemented upon passage.

July 6, 1998

(1) **415 KAR 1:114**, Certified contractors. The subject matter of the proposed amended administrative regulation is the requirements and procedures for the certification of contractors to be eligible to perform corrective action reimbursed by the commission.

(2) The Office of the Petroleum Storage Tank Environmental Assurance Fund intends to promulgate an amended administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998, at 1:30 p.m. at the Petroleum Storage Tank Environmental Assurance Fund Commission offices at 911 Leawood Drive, Frankfort, Kentucky in the second floor conference room.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 people, or by an administrative body, or association, having at least 5 members; and

2. A minimum of 5 persons, or an administrative body or association, agree, in writing, to be present at the public hearing.

(b) If the request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: David B. Wicker, Staff Counsel, 911 Leawood Drive, Frankfort, Kentucky 40601, Telephone (502) 564-5981, Fax (502) 564-0094.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Office of the Petroleum Storage Tank Environmental Assurance Fund at the above address.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to certified contractors is found in KRS 224.60-130.

(b) The administrative regulation that the commission intends to promulgate will amend 415 KAR 1:114. The amendments will conform to the statutory changes resulting from HB 282 (1998), and add restrictions concerning the submittal of information to the commission.

(c) The necessity and function of the proposed amended administrative regulation is as follows: The amendment will conform with the statutory changes and reorganization made in HB 282 (1998), and lessen the possibility of fraud.



**VOLUME 25, NUMBER 2 – AUGUST 1, 1998**

- (d) The benefit expected from the administrative regulation is to reduce the amount of fraudulent documents sent to the commission.
- (e) The regulation will be implemented upon passage.

July 6, 1998

(1) **415 KAR 1:116.** Certification of contracting companies (proposed regulation). The subject matter of the proposed administrative regulation is the requirements and procedures for the certification of contracting companies to be eligible to perform corrective action reimbursed by the commission.

(2) The Office of the Petroleum Storage Tank Environmental Assurance Fund intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998, at 1:30 p.m. at the Petroleum Storage Tank Environmental Assurance Fund Commission offices at 911 Leawood Drive, Frankfort, Kentucky in the second floor conference room.

(4)(a) The public hearing will be held if:

- 1. It is requested, in writing, by at least 5 people, or by an administrative body, or association, having at least 5 members; and
- 2. A minimum of 5 persons, or an administrative body or association, agree, in writing, to be present at the public hearing.

(b) If the request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: David B. Wicker, Staff Counsel, 911 Leawood Drive, Frankfort, Kentucky 40601, Telephone (502) 564-5981, Fax (502) 564-0094.

(b) On a request for public hearing, a person shall state:

- 1. "I agree to attend the public hearing."; or
- 2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Office of the Petroleum Storage Tank Environmental Assurance Fund at the above address.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to certification of contracting companies is found in KRS 224.60-130.

(b) The administrative regulation that the commission intends to promulgate is 415 KAR 1:116. The regulation will conform to the statutory changes resulting from HB 282 (1998), and set the requirements and responsibilities of companies engaged in environmental remediation.

(c) The necessity and function of the proposed amended administrative regulation is as follows: The regulation will conform to the statutory changes resulting from HB 282 (1998), and set the requirements and responsibilities of companies engaged in environmental remediation. This will allow better oversight and control of potential commission abuses.

(d) The benefit expected from the administrative regulation is to allow the commission to address companies that violate the commission's regulations more effectively.

(e) The regulation will be implemented by making the provisions effective upon applications submitted on or after January 1, 1999.

July 6, 1998

(1) **415 KAR 1:120.** Hearings. The subject matter of the proposed amended administrative regulation is the procedures for the preparation and conduct of an administrative hearing before the commission.

(2) The Office of the Petroleum Storage Tank Environmental Assurance Fund intends to promulgate an amended administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998, at 1:30 p.m. at the Petroleum Storage Tank Environmental Assurance Fund Commission offices at 911 Leawood Drive, Frankfort, Kentucky in the second floor conference room.

(4)(a) The public hearing will be held if:

- 1. It is requested, in writing, by at least 5 people, or by an administrative body, or association, having at least 5 members; and
- 2. A minimum of 5 persons, or an administrative body or association, agree, in writing, to be present at the public hearing.

(b) If the request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: David B. Wicker, Staff Counsel, 911 Leawood Drive, Frankfort, Kentucky 40601, Telephone (502) 564-5981, Fax (502) 564-0094.

(b) On a request for public hearing, a person shall state:

- 1. "I agree to attend the public hearing."; or
- 2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Office of the Petroleum Storage Tank Environmental Assurance Fund at the above address.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to administrative hearings is found in KRS 224.60-130.

(b) The administrative regulation that the commission intends to promulgate will amend 415 KAR 1:120. The amendments will conform to the statutory changes resulting from HB 282 (1998).

(c) The necessity and function of the proposed amended administrative regulation is as follows: The amendment will conform with the statutory changes and reorganization made in HB 282 (1998).

(d) The benefit expected from the administrative regulation is to achieve consistency with the statutory language.

(e) The regulation will be implemented upon passage.

July 6, 1998

(1) **415 KAR 1:125.** Discovery. The subject matter of the proposed amended administrative regulation is the procedures for the preparation and conduct of discovery in an administrative hearing before the commission.

(2) The Office of the Petroleum Storage Tank Environmental Assurance Fund intends to promulgate an amended administrative regulation



governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998, at 1:30 p.m. at the Petroleum Storage Tank Environmental Assurance Fund Commission offices at 911 Leawood Drive, Frankfort, Kentucky in the second floor conference room.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 people, or by an administrative body, or association, having at least 5 members; and

2. A minimum of 5 persons, or an administrative body or association, agree, in writing, to be present at the public hearing.

(b) If the request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: David B. Wicker, Staff Counsel, 911 Leawood Drive, Frankfort, Kentucky 40601, Telephone (502) 564-5981, Fax (502) 564-0094.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Office of the Petroleum Storage Tank Environmental Assurance Fund at the above address.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to discovery in administrative hearings is found in KRS 224.60-130.

(b) The administrative regulation that the commission intends to promulgate will amend 415 KAR 1:125. The amendments will conform to the statutory changes resulting from HB 282 (1998).

(c) The necessity and function of the proposed amended administrative regulation is as follows: The amendment will conform with the statutory changes and reorganization made in HB 282 (1998).

(d) The benefit expected from the administrative regulation is to achieve consistency with the statutory language.

(e) The regulation will be implemented upon passage.

July 6, 1998

(1) **415 KAR 1:130**, Tank removal account. The subject matter of the proposed amended administrative regulation is the requirements to participate in the tank removal account for low income owners of petroleum storage tanks.

(2) The Office of the Petroleum Storage Tank Environmental Assurance Fund intends to promulgate an amended administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998, at 1:30 p.m. at the Petroleum Storage Tank Environmental Assurance Fund Commission offices at 911 Leawood Drive, Frankfort, Kentucky in the second floor conference room.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 people, or by an administrative body, or association, having at least 5 members; and

2. A minimum of 5 persons, or an administrative body or association, agree, in writing, to be present at the public hearing.

(b) If the request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: David B. Wicker, Staff Counsel, 911 Leawood Drive, Frankfort, Kentucky 40601, Telephone (502) 564-5981, Fax (502) 564-0094.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Office of the Petroleum Storage Tank Environmental Assurance Fund at the above address.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Tank Removal Account is found in KRS 224.60-130.

(b) The administrative regulation that the commission intends to promulgate will amend 415 KAR 1:130, the standards for participation and reimbursement from the account.

(c) The necessity and function of the proposed amended administrative regulation is as follows: KRS 224.60-130 requires the commission to establish this account. HB 282 (1998) amended certain provisions of KRS 224.60-130. This regulation will comply with the mandate and amendments by setting the eligibility and compensation standards.

(d) The benefit expected from the administrative regulation is to lessen the financial burden on low income tank owners who must, by law, remove their tanks.

(e) The regulation will be implemented by transferring funds from the Financial Responsibility Account to the account at the beginning of each fiscal year. Forms will be included in the regulation to allow the eligible tank owners to begin application to the program.

July 6, 1998

(1) **415 KAR 1:135**, Financial audits. (proposed regulation). The subject matter of the proposed administrative regulation is the requirements and procedures for the commission to conduct audit reviews of the records of entities receiving reimbursement from the commission.

(2) The Office of the Petroleum Storage Tank Environmental Assurance Fund intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998, at 1:30 p.m. at the Petroleum Storage Tank Environmental Assurance Fund Commission offices at 911 Leawood Drive, Frankfort, Kentucky in the second floor conference room.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 people, or by an administrative body, or association, having at least 5 members; and

2. A minimum of 5 persons, or an administrative body or association, agree, in writing, to be present at the public hearing.

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

(b) If the request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to: David B. Wicker, Staff Counsel, 911 Leawood Drive, Frankfort, Kentucky 40601, Telephone (502) 564-5981, Fax (502) 564-0094.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Office of the Petroleum Storage Tank Environmental Assurance Fund at the above address.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to financial audits is found in KRS 224.60-130.

(b) The administrative regulation that the commission intends to promulgate is 415 KAR 1:135. The regulation will conform to the statutory changes resulting from HB 282 (1998), and set the requirements and responsibilities of the commission in conducting audits.

(c) The necessity and function of the proposed amended administrative regulation is as follows: The proposed regulation will conform to the statutory requirement in HB 282 (1998), and set the requirements and responsibilities of the commission when conducting audits. The proposed regulation will also set the penalty for companies that refuse to allow audits.

(d) The benefit expected from the administrative regulation is to allow the commission to discover and address any abuse.

(e) The regulation will be implemented upon promulgation.

### JUSTICE CABINET Kentucky Parole Board

July 14, 1998

(1) Regulation number and title: **501 KAR 1:030**, Determining parole eligibility.

(2) The Justice Cabinet, intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Barbara Jones, General Counsel, Justice Cabinet, Bush Building, 403 Wapping Street, Frankfort, Kentucky 40601, Telephone Number (502) 564-3279, Facsimile Number (502) 564-5244.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Corrections at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 439.340(3).

(b) The administrative regulation that the Justice Cabinet intends to promulgate limits parole eligibility for a sexual offender, increases the length of time a violent offender shall serve before becoming eligible, incorporates prerelease probation and addresses payment of restitution.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows:

1. KRS 439.340(3) authorizes the secretary to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any division therein.

2. This administrative regulation codifies operating procedures at the Justice Cabinet to comply with KRS Chapter 13A and to reflect current operating procedures.

(d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A, to codify current operating procedures, and safeguard public health and safety.

(e) This administrative regulation will be implemented as follows: Staff will comply with operational procedures and standards noted in this administrative regulation.

July 14, 1998

(1) Regulation number and title: **501 KAR 1:050**, Granting final discharge from parole.

(2) The Justice Cabinet, intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Barbara Jones, General Counsel, Justice Cabinet, Bush Building, 403 Wapping Street, Frankfort, Kentucky 40601, Telephone Number (502) 564-3279, Facsimile Number (502) 564-5244.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of Corrections at the address listed above.
- (7) Information relating to the proposed administrative regulation:
- (a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 439.340(3).
- (b) The administrative regulation that the Justice Cabinet intends to promulgate so the Parole Board may comply with the recently enacted legislation which required the Board to withhold the issuance of a final discharge until restitution is paid in full.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows:
1. KRS 439.340(3) authorizes the secretary to promulgate administrative regulations necessary and suitable for the proper administration of the cabinet or any division therein.
2. This administrative regulation codifies operating procedures at the Justice Cabinet to comply with KRS Chapter 13A and to reflect current operating procedures.
- (d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A, to codify current operating procedures, and safeguard public health and safety.
- (e) This administrative regulation will be implemented as follows: Staff will comply with operational procedures and standards noted in this administrative regulation.

**Department of Corrections**

July 14, 1998

- (1) Regulation number and title: **501 KAR 2:070**, Work release.
- (2) The Justice Cabinet, Department of Corrections, intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Department of Corrections, Office of General Counsel, Room 200, State Office Building, Frankfort, Kentucky 40601, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Department of Corrections at the address listed above.
- (7) Information relating to the proposed administrative regulation:
- (a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 196.035 and 197.020.
- (b) The administrative regulation that the Department of Corrections intends to promulgate will establish 501 KAR 2:070, as follows: This regulation identifies procedures for implementing work release privileges granted by KRS 533.010(14).
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows:
1. KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.
2. This administrative regulation updates operating procedures at the Department of Corrections to comply with KRS Chapter 13A and to reflect current operating procedures.
- (d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to codify current operating procedures.
- (e) This administrative regulation will be implemented as follows: Staff will comply with operational procedures and standards noted in policy changes.

July 13, 1998

- (1) Regulation Number and Title: **501 KAR 6:020**, Department of Corrections.
- (2) The Justice Cabinet, Department of Corrections, intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Department of Corrections, Office of General Counsel, Room 200, State Office Building, Frankfort, Kentucky 40601, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

VOLUME 25, NUMBER 2 – AUGUST 1, 1998

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Corrections at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 196.035 and 197.020.

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 6:020, as follows:

1. Inmate canteen (CPP 2.1) shall be amended to reflect the revisions to KRS 196.270 which include private correctional facilities in the operation and administration of the centralized inmate canteen.

2. Open Records Law (CPP 6.1) shall be amended to reflect amendments to KRS 197.025, to delete references to commercial purpose, and to include an employee's responsibility for obtaining and using Corrections' records.

3. Execution (CPP 9.5) shall be amended to reflect a currently condemned inmate's ability to choose between lethal injection or the electric chair and to comply with KRS Chapter 13A.

4. Health maintenance services (CPP 13.2) shall be totally revised to reflect revisions to KRS 197.020 and 439.3405 and to comply with KRS Chapter 13A.

5. Substance Abuse Treatment Program (CPP 13.8) shall be amended to comply with new federal mandates and KRS Chapter 13A.

6. Dental services (CPP 13.9) shall be amended to reflect amendments to KRS 197.020 which permit a fee for dental services and to comply with KRS Chapter 13A.

7. Sex offender registration (CPP 13.11) shall be established to set forth the procedures for compiling the information necessary to implement the Sex Offender Registration System.

8. Inmate grievance procedure (CPP 14.6) shall be amended to reflect amendments to KRS Chapter 197 which permit the waiver of confidentiality to a grievance by an inmate, sets forth the requirements for the grievance's contents and excludes some employees from participation on a grievance committee.

9. Meritorious good time (CPP 15.3) shall be amended to reflect amendments to KRS 197.045, to accurately reflect who is eligible and how the time is calculated, and to conform to KRS Chapter 13A.

10. Unauthorized substance abuse testing (CPP 15.8) shall be amended to comply with new federal mandates and KRS Chapter 13A.

11. Inmate visits (CPP 16.1) shall be amended to comply with the new federal guidelines regarding progressive discipline, to add grandchildren to the definition of immediate family and to expand the verified sources of information utilized to verify identity of visitors.

12. Custody and security guidelines (CPP 18.5) shall be amended to reflect the ability of Lee Adjustment Center to house medium security inmates, to accurately reflect the custody levels and their respective institutions, to incorporate recent revisions to the Classification Manual and comply with KRS Chapter 13A.

13. Religious programs (CPP 23.1) shall be amended to reflect amendments to KRS Chapter 197 regarding inmate's access to religious instruction and publications and to comply with KRS Chapter 13A.

14. Pretrial diversion (CPP 27-10-01) shall be established to set forth the procedures, in addition to standard assessment procedures, which shall be followed for an offender with pretrial diversion status.

15. Prerelease probation (CPP 27-11-02) shall be established to set forth the criteria for eligibility and the responsibilities of those involved in making a recommendation to the court.

16. Guidelines for monitoring financial obligations ordered by the releasing authority (CPP 27-12-11) shall be amended to require payment of restitution prior to release from supervision and to comply with KRS Chapter 13A.

17. Drug and alcohol testing of offenders (CPP 27-13-01) shall be amended to comply with a federal mandate and to comply with KRS Chapter 13A.

18. Community Confinement Program subject: electronic monitoring (27-15-02) shall be established to set forth: (1) the procedures regarding the use of electronic monitoring; (2) the criteria for eligibility; and (3) the levels of monitoring.

19. Prisoner intake notification (CPP 27-20-02) shall be amended to require the completion of a prisoner intake notification form for convicted felons sentenced to jail, or upon commitment to jail as a condition of probation and to comply with KRS Chapter 13A.

20. Apprehension and transportation of probation and parole violators (CPP 27-21-01) shall be amended to reflect the recent amendment to KRS 237.110(13), to reflect current practice and to comply with KRS Chapter 13A.

21. Application for final discharge from parole (CPP 27-25-01) shall be amended to reflect current, as well as new statutory, requirements for applying for a final discharge from parole and to comply with KRS Chapter 13A.

22. Presentence, postsentence, supplemental and partial investigations (CPP 28-01-03) is being totally revised to accurately reflect the information necessary to complete a presentence or postsentence investigation report, to include the revision to KRS 532.050(5) and to comply with KRS Chapter 13A.

23. Probation and parole investigation reports (presentence/postsentence verification, composition, case material and submission schedules) (CPP 28-01-04) shall be deleted as this policy is being incorporated into the totally revised CPP 28-01-03.

24. Probation and parole investigation reports (computation of jail custody credit) (CPP 28-01-05) shall be deleted as this policy is being incorporated into the totally revised CPP 28-01-03.

25. Probation and parole investigation reports (misdemeanant presentence investigation reports for the circuit and district courts) (CPP 28-01-06) shall be deleted as this policy is being incorporated into the totally revised CPP 28-01-03.

26. Probation and parole investigation reports (supplemental postsentence investigation report, case material and submission schedule) (CPP 28-01-07) shall be deleted as this policy is being incorporated into the totally revised CPP 28-01-03.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows:

1. KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.

2. This administrative regulation updates operating procedures at the Department of Corrections to comply with KRS Chapter 13A and to reflect current operating procedures.

(d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to codify current operating procedures.

(e) This administrative regulation will be implemented as follows: Staff will comply with operational procedures and standards noted in policy changes.

July 14, 1998

(1) Regulation number and title: **501 KAR 14:010**, Psychiatric or Forensic Psychiatric Facility Victim Notification System.

(2) The Justice Cabinet, Department of Corrections, intends to promulgate an administrative regulation governing the subject matter listed

above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998, at 9 a.m., in the Auditorium, in the State Office Building, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Justice Cabinet, Department of Corrections, Office of General Counsel, Room 200, State Office Building, Frankfort, Kentucky 40601, Telephone Number (502) 564-2024, Facsimile Number (502) 564-6494.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Corrections at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 196.035 and 197.020.

(b) The administrative regulation that the Department of Corrections intends to promulgate will amend 501 KAR 14:010, as follows: To comply with the recently enacted HB 455, so the Department of Corrections may begin registering the victim of a violent crime for notification of the escape or release from a psychiatric or forensic psychiatric facility of the involuntarily committed inmate.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows:

1. KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorizes the commissioner to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association.

2. This administrative regulation updates operating procedures at the Department of Corrections to comply with KRS Chapter 13A and to reflect current operating procedures.

(d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to codify current operating procedures.

(e) This administrative regulation will be implemented as follows: Staff will comply with operational procedures and standards noted in policy changes.

#### Department of State Police

July 14, 1998

(1) Regulation number and Title: **502 KAR 31:020**, Sex Offender Registration System.

(2) The Justice Cabinet has promulgated an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 27, 1998, at 10 a.m. at Kentucky State Police Headquarters, 919 Versailles Road, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
2. A minimum of five persons, or the administrative body or association agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least ten (10) days prior to August 27, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to Lieutenant Danny Ball, Kentucky State Police, Data Processing Section, 1250 Louisville Road, Frankfort, Kentucky 40601.

(b) On this request for a public hearing, the person shall state either:

1. "I agree to attend the public hearing"; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request from the Department of Kentucky State Police at the address listed in (5)(a) above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of administrative regulations governing the Sex Offender Registration System is KRS 15A.760 and 17.510.

(b) The administrative regulation that the Justice Cabinet intends to promulgate will not amend an existing administrative regulation. The administrative regulation that the cabinet intends to promulgate will establish the procedure to develop and implement a Sex Offender Registration System.

(c) The necessity and function of the proposed administrative regulation is to develop and implement a Sex Offender Registration System as statutorily required.

(d) The benefits expected from the administrative regulation are the establishment of a uniform procedure of a Sex Offender Registration System.

(e) The administrative regulation will be implemented as follows with an ordinary administrative regulation.

#### Kentucky Law Enforcement Council

July 15, 1998

(1) Regulation number and title: **503 KAR 1:060**, Kentucky Law Enforcement Council - definitions.

(2) The Kentucky Law Enforcement Council intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998, at 9 a.m., in Room 205, Funderburk Building, Richmond, Kentucky 40475-3137.

VOLUME 25, NUMBER 2 – AUGUST 1, 1998

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Larry D. Ball, Funderburk Building, Richmond, Kentucky 40475-3137; telephone - (606) 622-6218; FAX - (606) 622-2740.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Kentucky Law Enforcement Council at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 15.330(g) and 15A.160.

(b) The administrative regulation that the Kentucky Law Enforcement Council intends to promulgate will amend 501 KAR 1:060, as follows: Add acronyms to the definitions of "Kentucky Law Enforcement Council" and "Department of Criminal Justice Training"; amend and add definitions as necessary to conform to the requirements of 1998 Ky. Acts ch. 606, secs. 98-110, and 117.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 15.330 authorizes the Kentucky Law Enforcement Council to recommend administrative regulations to the Secretary of the Justice Cabinet which are necessary to accomplish the purposes of KRS 15.310 to 15.510 and 15.990 to 15.992. This administrative regulation updates operating procedures of the Kentucky Law Enforcement Council to comply with KRS Chapter 13A, to reflect current operating procedures, and to codify procedures as required by 1998 Ky. Acts ch. 606, secs. 98-110, and 117.

(d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to codify current operating procedures.

(e) This administrative regulation will be implemented as follows: The Kentucky Law Enforcement Council and staff, and staff and trainees of the Department of Criminal Justice Training will comply with operational procedures and standards noted in policy changes.

July 15, 1998

(1) Regulation number and title: **503 KAR 1:070**, Kentucky Law Enforcement Council - training: qualifications; application.

(2) The Kentucky Law Enforcement Council intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998, at 9 a.m., in Room 205, Funderburk Building, Richmond, Kentucky 40475-3137.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Larry D. Ball, Funderburk Building, Richmond, Kentucky 40475-3137; telephone - (606) 622-6218; FAX - (606) 622-2740.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Kentucky Law Enforcement Council at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 15.330(g) and 15A.160, and 1998 Ky. Acts ch. 606, secs. 98-110, and 117.

(b) The administrative regulation that the Kentucky Law Enforcement Council intends to promulgate will amend 501 KAR 1:070, as follows: Shall be amended to comply with KRS chapter 13A and current operating procedures; amend as necessary to conform to the requirements of and 1998 Ky. Acts ch. 606, secs. 98-110, and 117.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 15.330 authorizes the Kentucky Law Enforcement Council to recommend administrative regulations to the Secretary of the Justice Cabinet which are necessary to accomplish the purposes of KRS 15.310 to 15.510 and 15.990 to 15.992. This administrative regulation updates operating procedures of the Kentucky Law Enforcement Council to comply with KRS Chapter 13A and to reflect current operating procedures, and to codify statutes as enacted in and 1998 Ky. Acts ch. 606, secs. 98-110, and 117.

(d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to codify current operating procedures.

(e) This administrative regulation will be implemented as follows: The Kentucky Law Enforcement Council and staff, and staff and trainees of the Department of Criminal Justice Training will comply with operational procedures and standards noted in policy changes.

July 15, 1998

(1) Regulation number and title: **503 KAR 1:080**, Kentucky Law Enforcement Council - Certification of schools.

(2) The Kentucky Law Enforcement Council intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998, at 9 a.m., in Room 205, Funderburk Building, Richmond, Kentucky 40475-3137.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at

least 10 days prior to August 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Larry D. Ball, Funderburk Building, Richmond, Kentucky 40475-3137; telephone - (606) 622-6218; FAX - (606) 622-2740.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Kentucky Law Enforcement Council at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 15.330(g) and 15A.160.

(b) The administrative regulation that the Kentucky Law Enforcement Council intends to promulgate will amend 501 KAR 1:080, as follows: Shall be amended to comply with KRS Chapter 13A and current operating procedures; shall be amended as necessary to conform to the requirements of 1998 Ky. Acts ch. 606, secs. 98-110, and 117.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 15.330 authorizes the Kentucky Law Enforcement Council to recommend administrative regulations to the Secretary of the Justice Cabinet which are necessary to accomplish the purposes of KRS 15.310 to 15.510 and 15.990 to 15.992. This administrative regulation updates operating procedures of the Kentucky Law Enforcement Council to comply with KRS Chapter 13A and to reflect current operating procedures, and to codify statutes as required by 1998 Ky. Acts ch. 606, secs. 98-110, and 117.

(d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to codify current operating procedures.

(e) This administrative regulation will be implemented as follows: Staff and trainees of the Department of Criminal Justice Training will comply with operational procedures and standards noted in policy changes.

July 15, 1998

(1) Regulation number and title: **503 KAR 1:110**, Kentucky Law Enforcement Council - basic training: graduation requirements; records.

(2) The Kentucky Law Enforcement Council intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998, at 9 a.m., in Room 205, Funderburk Building, Richmond, Kentucky 40475-3137.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Larry D. Ball, Funderburk Building, Richmond, Kentucky 40475-3137; telephone - (606) 622-6218; FAX - (606) 622-2740.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Kentucky Law Enforcement Council at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 15.330(g) and 15A.160.

(b) The administrative regulation that the Kentucky Law Enforcement Council intends to promulgate will amend 501 KAR 1:110, as follows: Change the minimum number of hours required for basic training; amend language to conform to current operating procedures; amend language as necessary to conform to the requirements of 1998 Ky. Acts ch. 606, secs. 98-110, and 117; change the procedures and standards for failure and reexamination of basic training.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 15.330 authorizes the Kentucky Law Enforcement Council to recommend administrative regulations to the Secretary of the Justice Cabinet which are necessary to accomplish the purposes of KRS 15.310 to 15.510 and 15.990 to 15.992. This administrative regulation updates operating procedures of the Kentucky Law Enforcement Council to comply with KRS Chapter 13A and to reflect current operating procedures, and to codify statutes as required by 1998 Ky. Acts ch. 606, secs. 98-110, and 117.

(d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to codify current operating procedures, and to codify legislation as enacted by the 1998 Legislative Session through HB 455.

(e) This administrative regulation will be implemented as follows: The Kentucky Law Enforcement Council and staff, and instructors and trainees of the Department of Criminal Justice Training will comply with operational procedures and standards noted in policy changes.

July 15, 1998

(1) Regulation number and title: **503 KAR 1:120**, Kentucky Law Enforcement Council - in-service training: graduation requirements; recognized courses; records.

(2) The Kentucky Law Enforcement Council intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998, at 9 a.m., in Room 205, Funderburk Building, Richmond, Kentucky 40475-3137.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Larry D. Ball, Funderburk



**VOLUME 25, NUMBER 2 – AUGUST 1, 1998**

Building, Richmond, Kentucky 40475-3137; telephone - (606) 622-6218; FAX - (606) 622-2740.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Kentucky Law Enforcement Council at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 15.330(g) and 15A.160.

(b) The administrative regulation that the Kentucky Law Enforcement Council intends to promulgate will amend 501 KAR 1:120, as follows: amend language to conform to current operating procedures; amend language as necessary to conform to the requirements of 1998 Ky. Acts ch. 606, secs. 98-110, and 117; change the procedures and standards for failure and reexamination of in-service training.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 15.330 authorizes the Kentucky Law Enforcement Council to recommend administrative regulations to the Secretary of the Justice Cabinet which are necessary to accomplish the purposes of KRS 15.310 to 15.510 and 15.990 to 15.992. This administrative regulation updates operating procedures of the Kentucky Law Enforcement Council to comply with KRS Chapter 13A and to reflect current operating procedures, and to codify statutes as required by 1998 Ky. Acts ch. 606, secs. 98-110, and 117.

(d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to codify current operating procedures, and to codify legislation as enacted by the 1998 Legislative Session through HB 455.

(e) This administrative regulation will be implemented as follows: The Kentucky Law Enforcement Council and staff, and instructors and trainees of the Department of Criminal Justice Training will comply with operational procedures and standards noted in policy changes.

July 15, 1998

(1) Regulation number and title: **503 KAR 1:130**, Kentucky Law Enforcement Council - review of council and school decisions; appeal to circuit court.

(2) The Kentucky Law Enforcement Council intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998, at 9 a.m., in Room 205, Funderburk Building, Richmond, Kentucky 40475-3137.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Larry D. Ball, Funderburk Building, Richmond, Kentucky 40475-3137; telephone - (606) 622-6218; FAX - (606) 622-2740.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Kentucky Law Enforcement Council at the address listed above.

(7) Information relating to the proposed administrative regulation: The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 15.330(g) and 15A.160, and 1998 Ky. Acts ch. 606, secs. 98-110, and 117.

(b) The administrative regulation that the Kentucky Law Enforcement Council intends to promulgate will amend 501 KAR 1:130, as follows: Establish procedures to appeal council decisions regarding certification.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 15.330 authorizes the Kentucky Law Enforcement Council to recommend administrative regulations to the Secretary of the Justice Cabinet which are necessary to accomplish the purposes of KRS 15.310 to 15.510 and 15.990 to 15.992. This administrative regulation updates operating procedures of the Kentucky Law Enforcement Council to comply with KRS Chapter 13A and to codify procedures as required by 1998 Ky. Acts ch. 606, secs. 98-110, and 117.

(d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A, and to codify statutes as enacted during the 1998 Legislative Session in 1998 Ky. Acts ch. 606, secs. 98-110, and 117.

(e) This administrative regulation will be implemented as follows: The Kentucky Law Enforcement Council and staff, law enforcement agencies, applicants and officers will comply with operational procedures and standards as established in policy.

July 15, 1998

(1) Regulation number and title: **503 KAR 1:140**, Kentucky Law Enforcement Council - peace officer professional standards.

(2) The Kentucky Law Enforcement Council intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998, at 9 a.m., in Room 205, Funderburk Building, Richmond, Kentucky 40475-3137.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Larry D. Ball, Funderburk Building, Richmond, Kentucky 40475-3137; telephone - (606) 622-6218; FAX - (606) 622-2740.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an admin-



istrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Kentucky Law Enforcement Council at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation relating to the subject matter of this administrative regulation is KRS 15.330(g) and 15A.160, and 1998 Ky. Acts ch. 606, secs. 98-110, and 117. The administrative regulation that the Kentucky Law Enforcement Council intends to promulgate will create 503 KAR 1:140, as follows: Certification of exempt officers: establish procedures for exempt officers requesting certification by the Council; Suitability: Establish minimum standards and procedures to determine an applicant's suitability for the position of peace officer. Areas to be included are background investigation, medical screening, drug screening, psychological screening, fingerprinting, physical agility, and polygraph examination; Testing costs: establish procedure for agency's repayment of testing services provided by the council; Agency testing: establish procedure to be used to approve and accept testing done by the agency; Job task analysis: Establish guidelines and procedures for law enforcement agencies to adopt the Department of Criminal Justice Training validated job task analysis; Financial hardship: Establish standards and procedures necessary to determine if a waiver of costs due to undue financial hardship has been demonstrated; Employment changes: establish procedures for reporting a peace officer's change of employment status due to retirement, resignation, termination, revocation, or transfer to another law enforcement agency; Records: establish guidelines and procedures regarding records retention, security and release of information in compliance with the Open Records Act; Payment of training costs: Establish standards and procedures regarding repayment of training costs if an agency knowingly employs or appoints a person who fails to meet minimum certification standards; Denial participation in KLEFPF: establish standards and procedures prohibiting KLEFPF participation of an agency that knowingly employs or appoints a person who fails to meet minimum certification standards; Agency reporting: establish minimum standards and procedures for information reported by the agency; Compliance: Establish standards and procedures to audit the compliance of an applicant, trainee and agency; Test results: establish standards and procedures regarding the length of test result validity, updating test results, and agency access to prior test results; Add language as necessary to conform to the requirements of 1998 Ky. Acts ch. 606, secs. 98-110, and 117.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 15.330 authorizes the Kentucky Law Enforcement Council to recommend administrative regulations to the Secretary of the Justice Cabinet which are necessary to accomplish the purposes of KRS 15.310 to 15.510 and 15.990 to 15.992; this administrative regulation codifies procedures of the Kentucky Law Enforcement Council to comply with KRS Chapter 13A and 1998 Ky. Acts ch. 606, secs. 98-110, and 117 as it relates to peace officer professional standards.

(d) The benefits expected from this administrative regulation are: To comply with KRS Chapter 13A and to codify statutes as enacted by the 1998 Legislative Session in and 1998 Ky. Acts ch. 606, secs. 98-110, and 117 to improve the quality of law enforcement services provided to the citizens of the Commonwealth.

(e) This administrative regulation will be implemented as follows: The Kentucky Law Enforcement Council and staff, law enforcement agencies, applicants and officers will comply with operational procedures and standards as established in policy.

#### TRANSPORTATION CABINET

June 19, 1998

(1) **601 KAR 2:010**, General procedures.

(2) The Kentucky Transportation Cabinet, Department of Vehicle Regulation intends to promulgate an amendment to administrative regulation 601 KAR 2:010. This amendment will address the form of payment of fees.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 24, 1998 at 10 a.m., local prevailing time, at 501 High Street, State Office Building, 10<sup>th</sup> Floor General Counsel Conference Room, Frankfort, Kentucky 40622.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 24, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sandra Pullen Davis, 501 High Street, Mail Code 10-13, 10th Floor, State Office Building, Frankfort, Kentucky 40622.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Transportation Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 601 KAR 2:010 is KRS 186.050, 281.600, 365.015, and 40 CFR 1023.

(b) The administrative regulation that the Transportation Cabinet intends to promulgate will amend 601 KAR 2:010. It will amend the current requirement in Section 2 that forbids the Department of Vehicle Regulation to accept personal or business checks for payment of apportioned registration licensing fees.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth general procedures of the Department of Vehicle Regulation which are specifically covered by topics in other administrative regulations. This administrative regulation is needed to provide for a more orderly operation of the department.

(d) The benefits expected from the administrative regulation are an ease in doing business with the Department of Vehicle Regulation for those commercial motor vehicle owners who apportion register their motor vehicles pursuant to the International Registration Plan and 601 KAR 9:135.

(e) The administrative regulation will be implemented as follows: The registrants will be notified that personal and business checks will be accepted for payment of apportioned registration fees unless the registrant has previously bounced a check to the Department of Highways or has been found to have financial difficulties.

(8) Any person with a disability for which the Transportation Cabinet needs to make an accommodation in order for the person to participate in the public comment hearing should notify Sandra Pullen Davis at the above-mentioned address no later than August 14, 1998.

VOLUME 25, NUMBER 2 – AUGUST 1, 1998

EDUCATION PROFESSIONAL STANDARDS BOARD

June 1998

- (1) **704 KAR 20:460**, Examination prerequisites for principal certification.
- (2) The Education Professional Standards Board intends to amend the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 27, 1998, at 10 a.m. in the 1<sup>st</sup> Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.
- (c) If a request for a public hearing is not received from the required number of people at least 10 days prior to August 27, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Executive Secretary, Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky, 40601, (502) 573-4606.
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Education Professional Standards Board at the address listed above.
- (7) Information relating to the proposed administrative regulation:
  - (a) The statutory authority for the amendment of an administrative regulation relating to the examination prerequisites for principal certification is KRS 161.020 and 161.027.
  - (b) The administrative regulation that the Education Professional Standards Board intends to amend will replace the professional knowledge multiple-choice test currently required with a new performance-based test assessing knowledge in the areas of instructional leadership, management, and supervision.
  - (c) The necessity and function of the proposed administrative regulation is as follows: KRS 161.020 and 161.027 require that all professional school personnel hold certificates of legal qualifications for their respective positions to be issued upon completion of programs of preparation and assessments as prescribed by the Educational Professional Standards Board. This administrative regulation serves to specify the assessments that must be successfully completed prior to the issuance of principal certification.
  - (d) The benefits expected from administrative regulation are: The addition of this new licensure test will provide more quality assurance to the principal certification process. The new test is a performance-based test by which the applicant's analysis, synthesis, and evaluation skills can be better measured thus, hopefully, improving the quality of persons being issued a principal certificate.
  - (e) The administrative regulation will be implemented as follows: The Office of Teacher Education and Certification will disseminate the administrative regulation to all local school districts and administrator preparation programs at the higher education institutions in the state of Kentucky. In addition, the Educational Testing Service, the company which administers the test, will list the new test as a Kentucky requirement in its registration bulletin.

June 1998

- (1) **704 KAR 20:700**, Standards for admission to teacher education.
- (2) The Education Professional Standards Board intends to amend the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 27, 1998, at 10 a.m. in the Local District Room, 1<sup>st</sup> Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if it is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and a minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If 5 persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.
- (c) If a request for a public hearing is not received from the required number of people at least 10 days prior to August 27, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Executive Secretary, Education Professional Standards Board, 1024 Capital Center Drive, Frankfort, Kentucky, 40601, fax (502) 573-1610.
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Education Professional Standards Board at the address listed above.
- (7) Information relating to the proposed administrative regulation:
  - (a) The statutory authority for the promulgation of an administrative regulation relating to the requirements for teacher education programs is found in KRS 161.028.
  - (b) The administrative regulation that the Education Professional Standards Board intends to amend will establish passing scores for the computer-based format for the reading, writing, and mathematics pre-professionals skills test and the SAT I.
  - (c) The necessity, function, and conformity section of the proposed administrative regulation is as follows: KRS 161.028 requires that a teacher education institution be approved for offering the preparation program corresponding to a particular certificate on the basis of standards and procedures established by the Education Professional Standards Board. KRS 161.030 requires that a certificate shall be issued to a person who has completed a program approved by the Education Professional Standards Board. This administrative regulation established the standards for admission to a teacher education program and is not required by federal law.
  - (d) The benefits expected from administrative regulation are: Institutions will have various assessments to measure general academic competency for applicants requesting admission into teacher preparation programs.
  - (e) The administrative regulation will be implemented as follows: Each institution of higher education having accredited teacher education programs will be copied with this regulation and required to forward an acknowledgement of receipt. Staff will be available on request, to respond to

specific questions relating to the regulation.

KENTUCKY COMMISSION ON THE DEAF AND HARD OF HEARING

July 1, 1998

(1) **735 KAR 2:010.** The subject matter of the proposed administrative regulation is to set the definitions for the Interpreter Referral Services Program.

(2) The Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) intends to promulgate an administrative regulation governing the above subject matter.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998 at the Kentucky Commission on the Deaf and Hard of Hearing offices, from 9 a.m. - 12 noon. The Kentucky Commission on the Deaf and Hard of Hearing is located at 632 Versailles Road, Frankfort, Kentucky.

(4)(a) The public hearing will be held if it is requested, in writing, by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and a minimum of the five (5) persons, or the administrative body or association, agree, in writing to be present at the public hearing.

(b) If five (5) persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least ten (10) days prior to August 21, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Commission on the Deaf and Hard of Hearing, ATTN: Dr. Bobbie Beth Scoggins, 632 Versailles Road, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Kentucky Commission on the Deaf and Hard of Hearing at the above address.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation in relation to the Interpreter Referral Services Program is House Bill 321 (1998), the Commonwealth Budget Final Budget Memorandum, FB 1998-2000 and KRS 163.510.

(b) The administrative regulation the KCDHH intends to promulgate will not amend existing regulations. It will set the definitions of the Interpreter Referral Services Program.

(c) The necessity and function of the proposed administrative regulation are as follows: This administrative regulation is necessary to implement the provisions of House Bill 321 (1998), the Commonwealth Budget Final Budget Memorandum, FB 1998-2000 and KRS 163.510, which mandates that the KCDHH establish an Interpreter Referral Services Program to provide interpreter services to state agencies. The function of this administrative regulation is to establish the definitions.

(d) The benefits expected from the administrative regulation are: Streamlined, cost-effective provision of interpreter services for access to state government services by deaf or hard of hearing citizens will be ensured. This administrative regulation will implement a program that will ensure that all state agencies are able to meet their obligation to provide equitable access to their services and programs and reduce duplication.

(e) The administrative regulation will be implemented as follows: The administrative regulation will establish the definitions necessary for the implementation of the Interpreter Referral Services Program.

July 1, 1998

(1) **735 KAR 2:020.** The subject matter of the proposed administrative regulation is to establish the program parameters of the Interpreter Referral Services Program.

(2) The Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998 at the Kentucky Commission on the Deaf and Hard of Hearing offices, from 9 a.m. - 12 noon. The Kentucky Commission on the Deaf and Hard of Hearing is located at 632 Versailles Road, Frankfort, Kentucky.

(4)(a) The public hearing will be held if it is requested, in writing, by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and a minimum of the five (5) persons, or the administrative body or association, agree, in writing to be present at the public hearing.

(b) If five (5) persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least ten (10) days prior to August 21, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Commission on the Deaf and Hard of Hearing, ATTN: Dr. Bobbie Beth Scoggins, 632 Versailles Road, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Kentucky Commission on the Deaf and Hard of Hearing at the above address.

(7) Information relating to the proposed administrative regulations.

(a) The statutory authority for the promulgation of an administrative regulations in relation to the Interpreter Referral Services Program is House Bill 321 (1998), the Commonwealth Budget Final Budget Memorandum, FB 1998-2000 and KRS 163.510.

(b) The administrative regulation the KCDHH intends to promulgate will not amend existing regulations. It will establish the program parameters of the Interpreter Referral Services Program.

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

(c) The necessity and function of the proposed administrative regulation are as follows: This administrative regulation is necessary to implement the provisions of House Bill 321 (1998), the Commonwealth Budget Final Budget Memorandum, FB 1998-2000 and KRS 163.510, which mandates that the KCDHH establish an Interpreter Referral Services Program to provide interpreter services to state agencies. The function of this administrative regulation is to establish the program parameters.

(d) The benefits expected from the administrative regulation are: Streamlined, cost-effective provision of interpreter services for access to state government services by deaf or hard of hearing citizens will be ensured. This administrative regulation will implement a program that will ensure that all state agencies are able to meet their obligation to provide equitable access to their services and programs and reduce duplication.

(e) The administrative regulation will be implemented as follows: The administrative regulation will establish the program parameters of the Interpreter Referral Services Program.

July 1, 1998

(1) **735 KAR 2:030.** The subject matter of the proposed administrative regulation is to establish the interpreter qualifications of interpreters utilized by the Interpreter Referral Services Program.

(2) The Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed regulation has been scheduled for August 21, 1998 at the Kentucky Commission on the Deaf and Hard of Hearing offices, from 9 a.m. - 12 noon. The Kentucky Commission on the Deaf and Hard of Hearing is located at 632 Versailles Road, Frankfort, Kentucky.

(4)(a) The public hearing will be held if it is requested, in writing, by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and a minimum of the five (5) persons, or the administrative body or association, agree, in writing to be present at the public hearing.

(b) If five (5) persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least ten (10) days prior to August 21, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Commission on the Deaf and Hard of Hearing, ATTN: Dr. Bobbie Beth Scoggins, 632 Versailles Road, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Kentucky Commission on the Deaf and Hard of Hearing at the above address.

(7) Information relating to the proposed administrative regulations.

(a) The statutory authority for the promulgation of administrative regulations in relation to the Interpreter Referral Services Program is House Bill 321 (1998), the Commonwealth Budget Final Budget Memorandum, FB 1998-2000 and KRS 163.510.

(b) The administrative regulation the KCDHH intends to promulgate will not amend existing regulations. It will establish the interpreter qualifications of interpreters utilized by the Interpreter Referral Services Program.

(c) The necessity and function of the proposed administrative regulation are as follows: This administrative regulation is necessary to implement the provisions of House Bill 321 (1998), the Commonwealth Budget Final Budget Memorandum, FB 1998-2000 and KRS 163.510, which mandates that the KCDHH establish an Interpreter Referral Services Program to provide interpreter services to state agencies. The function of this administrative regulation is to establish the interpreter qualifications of interpreters utilized by the Interpreter Referral Services Program.

(d) The benefits expected from the administrative regulations are: Streamlined, cost-effective provision of interpreter services for access to state government services by deaf or hard of hearing citizens will be ensured. This administrative regulation will implement a program that will ensure that all state agencies are able to meet their obligation to provide equitable access to their services and programs and reduce duplication.

(e) The administrative regulation will establish the interpreter qualifications of interpreters utilized by the Interpreter Referral Services Program.

July 1, 1998

(1) **735 KAR 2:040.** The subject matter of the proposed administrative regulation is to establish the interpreter protocols of the Interpreter Referral Services Program.

(2) The Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) intends to promulgate administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for August 21, 1998 at the Kentucky Commission on the Deaf and Hard of Hearing offices, from 9 a.m. - 12 noon. The Kentucky Commission on the Deaf and Hard of Hearing is located at 632 Versailles Road, Frankfort, Kentucky.

(4)(a) The public hearing will be held if it is requested, in writing, by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and a minimum of the five (5) persons, or the administrative body or association, agree, in writing to be present at the public hearing.

(b) If five (5) persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least ten (10) days prior to August 21, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Commission on the Deaf and Hard of Hearing, ATTN: Dr. Bobbie Beth Scoggins, 632 Versailles Road, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

VOLUME 25, NUMBER 2 – AUGUST 1, 1998

(b) Persons who wish to file this request may obtain a request form from the Kentucky Commission on the Deaf and Hard of Hearing at the above address.

(7) Information relating to the proposed administrative regulations.

(a) The statutory authority for the promulgation of administrative regulations in relation to the Interpreter Referral Services Program is House Bill 321 (1998), the Commonwealth Budget Final Budget Memorandum, FB 1998-2000 and KRS 163.510.

(b) The administrative regulation the KCDHH intends to promulgate will not amend existing regulations. It will establish the interpreter protocols of the Interpreter Referral Services Program.

(c) The necessity and function of the proposed administrative regulation are as follows: This administrative regulation is necessary to implement the provisions of House Bill 321 (1998), the Commonwealth Budget Final Budget Memorandum, FB 1998-2000 and KRS 163.510, which mandates that the KCDHH establish an Interpreter Referral Services Program to provide interpreter services to state agencies. The function of this administrative regulation is to establish the interpreter protocols for the Interpreter Referral Services Program.

(d) The benefits expected from the administrative regulation are: Streamlined, cost-effective provision of interpreter services for access to state government services by deaf or hard of hearing citizens will be ensured. This administrative regulation will implement a program that will ensure that all state agencies are able to meet their obligation to provide equitable access to their services and programs and reduce duplication.

(e) The administrative regulation will be implemented as follows: The administrative regulation will establish the interpreter protocols for the Interpreter Referral Services Program.

July 1, 1998

(1) **735 KAR 2:050.** The subject matter of the proposed administrative regulation is to establish the procedures for processing requests for services from the Interpreter Referral Services Program.

(2) The Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for August 21, 1998 at the Kentucky Commission on the Deaf and Hard of Hearing offices, from 9 a.m. - 12 noon. The Kentucky Commission on the Deaf and Hard of Hearing is located at 632 Versailles Road, Frankfort, Kentucky.

(4)(a) The public hearing will be held if it is requested, in writing, by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and a minimum of the five (5) persons, or the administrative body or association, agree, in writing to be present at the public hearing.

(b) If five (5) persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least ten (10) days prior to August 21, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Commission on the Deaf and Hard of Hearing, ATTN: Dr. Bobbie Beth Scoggins, 632 Versailles Road, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Kentucky Commission on the Deaf and Hard of Hearing at the above address.

(7) Information relating to the proposed administrative regulations.

(a) The statutory authority for the promulgation of administrative regulations in relation to the Interpreter Referral Services Program is House Bill 321 (1998), the Commonwealth Budget Final Budget Memorandum, FB 1998-2000 and KRS 163.510.

(b) The administrative regulation the KCDHH intends to promulgate will not amend existing regulations. They will establish the procedures for processing requests for services of the Interpreter Referral Services Program.

(c) The necessity and function of the proposed administrative regulation are as follows: This administrative regulation is necessary to implement the provisions of House Bill 321 (1998), the Commonwealth Budget Final Budget Memorandum, FB 1998-2000 and KRS 163.510, which mandates that the KCDHH establish an Interpreter Referral Services Program to provide interpreter services to state agencies. The function of this administrative regulation is to establish the procedures for processing the requests for services from the Interpreter Referral Services Program.

(d) The benefits expected from the administrative regulation are: Streamlined, cost-effective provision of interpreter services for access to state government services by deaf or hard of hearing citizens will be ensured. This administrative regulation will implement a program that will ensure that all state agencies are able to meet their obligation to provide equitable access to their services and programs and reduce duplication.

(e) The administrative regulation will be implemented as follows: The administrative regulation will establish the procedures for processing of requests for services of the Interpreter Referral Services Program.

July 1, 1998

(1) **735 KAR 2:060.** The subject matter of the proposed administrative regulation is to establish the process for receiving and handling complaints against interpreters, state agencies, and the Interpreter Referral Services.

(2) The Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for August 21, 1998 at the Kentucky Commission on the Deaf and Hard of Hearing offices, from 9 a.m. - 12 noon. The Kentucky Commission on the Deaf and Hard of Hearing is located at 632 Versailles Road, Frankfort, Kentucky.

(4)(a) The public hearing will be held if it is requested, in writing, by at least five (5) persons, or an administrative body, or an association having at least five (5) members; and a minimum of the five (5) persons, or the administrative body or association, agree, in writing to be present at the public hearing.

(b) If five (5) persons, or an administrative body or association, request this public hearing, and agree in writing to be present at this public hearing, it will be held as scheduled.

(c) If a request for a public hearing is not received from the required number of people at least ten (10) days prior to August 21, 1998, the public hearing will be cancelled.

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Commission on the Deaf and Hard of Hearing, ATTN: Dr. Bobbie Beth Scoggins, 632 Versailles Road, Frankfort, Kentucky 40601.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate administrative regulations governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Kentucky Commission on the Deaf and Hard of Hearing at the above address.

(7) Information relating to the proposed administrative regulations.

(a) The statutory authority for the promulgation of administrative regulation in relation to the Interpreter Referral Services Program is House Bill 321 (1998), the Commonwealth Budget Final Budget Memorandum, FB 1998-2000 and KRS 163.510.

(b) The administrative regulation the KCDHH intends to promulgate will not amend existing regulations. It will establish the process for receiving and handling complaints against interpreters, state agencies, or the Interpreter Referral Services Program.

(c) The necessity and function of the proposed administrative regulation are as follows: This administrative regulation is necessary to implement the provisions of House Bill 321 (1998), the Commonwealth Budget Final Budget Memorandum, FB 1998-2000 and KRS 163.510, which mandates that the KCDHH establish an Interpreter Referral Services Program to provide interpreting services to state agencies. The function of this administrative regulation is to establish the procedures for handling grievances.

(d) The benefits expected from the administrative regulation are: Streamlined, cost-effective provision of interpreter services for access to state government services by deaf or hard of hearing citizens will be ensured. This administrative regulation will implement a program that will ensure that all state agencies are able to meet their obligation to provide equitable access to their services and programs and reduce duplication.

(e) The administrative regulation will be implemented as follows: The administrative regulation will establish the procedures for receiving and handling grievances.

## SCHOOL FACILITIES CONSTRUCTION COMMISSION

July 1, 1998

(1) **750 KAR 2:010.** Education Technology Funding Program guidelines.

(2) The Finance and Administration Cabinet intends to promulgate the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 25, 1998, at 2 p.m. in Room 386, Capitol Annex, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least five persons, or an administrative body, or an association having at least five members; and
2. A minimum of five persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least ten (10) calendar days prior to August 25, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Dr. Robert Tarvin, Executive Director, School Facilities Construction Commission, Room 264, Capitol Annex, Frankfort, Kentucky 40601, (502) 564-5582, FAX (502) 564-2653.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file the request may obtain a request form from the Office of the Secretary at the following address: Finance and Administration Cabinet, Office of Legal and Legislative Services, Room 374 Capitol Annex, Frankfort, Kentucky 40601.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of the above-cited administrative regulation is contained in KRS 45A.045(2).

(b) The proposed regulation will allow local school districts to use federal dollars designated for purchasing appropriate technology according to the Technology Master Plan to be counted as part of a district's local match.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 157.617(1) authorizes the commission to promulgate administrative regulations necessary for the orderly conduct of its affairs, which includes the education technology funding program. KRS 157.660(3) requires the commission to promulgate administrative regulations by which a district that receives an offer of assistance but does not have the local match shall be able to accumulate a credit for the state offer of assistance for a period not to exceed three (3) years. This administrative regulation establishes the procedures and guidelines for determining the eligibility and level of participation for a local public school district, for making an offer of assistance to a school district, for verifying a local public school district funding match, and for the accumulation of credits by a local public school district that maintains its eligibility.

(d) The benefit expected from this proposed administrative regulation is as follows: Needy school districts will receive funding more easily.

(e) This administrative regulation will be implemented by the School Facilities Construction Commission tendering offers of assistance to school districts in accordance with this change.

## WORKFORCE DEVELOPMENT CABINET Department for Employment Services

June 24, 1998

(1) **787 KAR 1:200.** Maximum weekly benefit rate.

(2) The Workforce Development Cabinet, Department for Employment Services, Division of Unemployment Insurance, intends to amend the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 24, 1998, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 24, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sue Simon, Acting General Counsel, Office of General Counsel, Workforce Development Cabinet, 2nd Floor, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-6606.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Employment Services, 275 East Main Street, 2nd Floor East, Frankfort, Kentucky 40621.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to the maximum weekly benefit rate is state statute and by federal regulation.
- (b) The administrative regulation that the Department for Employment Services intends to promulgate will amend 787 KAR 1:200, Maximum weekly benefit rate. It will set the unemployment insurance maximum weekly unemployment insurance benefit rate that is in effect for the year July 1, 1998, through June 30, 1999.
- (c) The necessity and function of the proposed administrative regulation is as follows: KRS 341.380 requires the Secretary for Workforce Development to determine the average weekly wage for insured employment. Fifty-five (55) percent of this amount adjusted to the nearest multiple of one (1) dollar constitutes the maximum weekly unemployment insurance benefit rate for those workers whose benefit year commences on or after July 1, 1998, and prior to July 1, 1999. This administrative regulation applies the mathematical computation required by statute and contains the determination of the maximum weekly benefit rate.
- (d) The benefit expected from this administrative regulation is: This proposed administrative regulation sets forth the maximum weekly unemployment insurance benefit rate at \$268 for the year July 1, 1998, through June 30, 1999. This is a \$12 increase from last year's rate.

**LABOR CABINET**  
**Department of Workplace Standards**  
**Kentucky Occupational Safety and Health**

July 2, 1998

- (1) Regulation number and title: **803 KAR 2:306**. Occupational health and environmental controls.
- (2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for August 27, 1998, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, Frankfort, Kentucky 40601.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, or one (1) person representing the administrative body or association, agree to be present at the public hearing.
- (b) If a request for a public hearing is not received from the required number of people at least 10 days prior to August 27, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, telephone (502) 564-3070, or facsimile the request to (502) 564-1682.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Labor Cabinet at the address listed above.
- (7) Information relating to the proposed administrative regulation.
- (a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.
- (b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend is 803 KAR 2:306, as follows: The revisions to 29 CFR 1910.94, "Ventilation", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference. These revisions delete duplicative respiratory provisions and make this standard consistent with other standards dealing with respiratory protection. The proposed regulation will also update the reference to the Code of Federal Regulations.
- (c) The necessity and function of the proposed administrative regulation is: Kentucky's occupational safety and health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate these federal requirements.
- (d) The benefits expected from the proposed amendment to the administrative regulation are: The incorporation of this revision assures conformity with the Code of Federal Regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.
- (e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 2, 1998

- (1) Regulation number and title: **803 KAR 2:307**. Hazardous materials.
- (2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.



VOLUME 25, NUMBER 2 – AUGUST 1, 1998

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for August 27, 1998, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, or one (1) person representing the administrative body or association, agree to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to August 27, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, telephone (502) 564-3070, or facsimile the request to (502) 564-1682.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Labor Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend is 803 KAR 2:307, as follows: The revisions to 29 CFR 1910.111, "Storage and Handling of Anhydrous Ammonia", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference. These revisions revise references to the National Institute of Occupational Safety and Health (NIOSH). The proposed amendment will also change the "NECESSITY, FUNCTION AND CONFORMITY" paragraph and a definition to meet KRS Chapter 13A considerations, and update the reference to the Code of Federal Regulations.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's occupational safety and health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate these federal requirements.

(d) The benefits expected from the proposed amendment to the administrative regulation are: The incorporation of this revision assures conformity with the Code of Federal Regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.

(e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 2, 1998

(1) Regulation number and title: **803 KAR 2:308**. Occupational health and environmental controls.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for August 27, 1998, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, or one (1) person representing the administrative body or association, agree to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to August 27, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, telephone (502) 564-3070, or facsimile the request to (502) 564-1682.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Labor Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend is 803 KAR 2:308, as follows: This regulation incorporates by reference, changes to the Code of Federal Regulations related to respiratory protection as published in the Federal Register, Volume 63, Number 5, January 8, 1998. The changes replace the existing respiratory protection standard for general industry, construction, and maritime employment, except in situations where respiratory protection is used against Mycobacterium Tuberculosis. The changes do not effect agriculture. The new federal respiratory protection standard, incorporated by reference in this regulation, contains requirements for program administration, respirator selection, fit testing, medical evaluation, training, respirator use, cleaning, maintenance, repair, and other provisions. The new standard also simplifies respirator requirements for employers by deleting respirator provisions from other OSHA health standard as well as revising other references to make them consistent with the new standard. This regulation also removes existing state specific language regarding respiratory protection. The removal of this material is necessary to eliminate duplicative and obsolete language from the regulation. The regulation incorporates by reference the redesignation of the existing respiratory protection standard from 29 CFR 1910.134 to 29 CFR 1910.139. This renumbered existing regulation will remain in effect for respiratory protection used against Mycobacterium Tuberculosis. Finally, the regulation incorporates by reference, minor technical and typographical corrections to the Final Rule as published in the Federal Register, Volume 63, April 23, 1998.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's occupational safety and health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate these federal requirements.



VOLUME 25, NUMBER 2 – AUGUST 1, 1998

(d) The benefits expected from the proposed amendment to the administrative regulation are: The incorporation of this revision assures conformity with the Code of Federal Regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.

(e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 2, 1998

(1) Regulation number and title: **803 KAR 2:311**. Fire protection.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for August 27, 1998, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, or one (1) person representing the administrative body or association, agree to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to August 27, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, telephone (502) 564-3070, or facsimile the request to (502) 564-1682.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Labor Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend is 803 KAR 2:311, as follows: The revisions to 29 CFR 1910.156, "Fire Brigades", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference. These revisions change the reference from "MSHA/NIOSH" to "NIOSH under 29 CFR Part 84". Other amendments change the "NECESSITY, FUNCTION AND CONFORMITY" paragraph and the format of a definition to meet KRS Chapter 13A considerations, and update the reference to the current Code of Federal Regulations.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's occupational safety and health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate these federal requirements.

(d) The benefits expected from the proposed amendment to the administrative regulation are: The incorporation of this revision assures conformity with the Code of Federal Regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.

(e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 2, 1998

(1) Regulation number and title: **803 KAR 2:316**. Welding, cutting, and brazing.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for August 27, 1998, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, or one (1) person representing the administrative body or association, agree to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to August 27, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, telephone (502) 564-3070, or facsimile the request to (502) 564-1682.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Labor Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend is 803 KAR 2:316, as follows: The revisions to 29 CFR 1910.252, "General Requirements," as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference. These revisions change the reference from "MSHA/NIOSH" to "National Institute of Occupational Safety and Health (NIOSH) under 29 CFR Part 84" and "NIOSH under 29 CFR Part 84." Other amendments change the "NECESSITY, FUNCTION AND CONFORMITY" paragraph and the format of a definition to meet KRS Chapter 13A considerations, and update the reference to the current Code of Federal Regulations.

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

(c) The necessity and function of the proposed administrative regulation is: Kentucky's occupational safety and health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate these federal requirements.

(d) The benefits expected from the proposed amendment to the administrative regulation are: The incorporation of this revision assures conformity with the Code of Federal Regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.

(e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 2, 1998

(1) Regulation number and title: **803 KAR 2:317. Special industries.**

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for August 27, 1998, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, or one (1) person representing the administrative body or association, agree to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to August 27, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, telephone (502) 564-3070, or facsimile the request to (502) 564-1682.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Labor Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend is 803 KAR 2:317, as follows: The revisions to 29 CFR 1910.261, "Pulp, Paper, and Paperboard Mills," as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference. These revisions change the reference in one paragraph from "ANSI Z88.2-1969" to "29 CFR 1910.134," and from "ANSI Z-88.2-1969 and K-13.1-1967" to "29 CFR 1910.134" in another. Other amendments change the "NECESSITY, FUNCTION AND CONFORMITY" paragraph and the format of a definition to meet KRS Chapter 13A considerations and update the reference to the current Code of Federal Regulations.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's occupational safety and health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate these federal requirements.

(d) The benefits expected from the proposed amendment to the administrative regulation are: The incorporation of this revision assures conformity with the Code of Federal Regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.

(e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 13, 1998

(1) Regulation number and title: **803 KAR 2:320. Air contaminants.**

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed amendments to this administrative regulation has been scheduled for August 27, 1998, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, or one (1) person representing the administrative body or association, agree to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to August 27, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, telephone (502) 564-3070, or facsimile the request to (502) 564-1682.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Labor Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend is 803 KAR 2:320, as follows: The revisions to 29 CFR 1910.1001, "Asbestos", 29 CFR 1910.1003, "13 Carcinogens (4-Nitrophenyl, etc.)", 29 CFR

VOLUME 25, NUMBER 2 – AUGUST 1, 1998

1910.1017, "Vinyl Chloride", 29 CFR 1910.1018, "Inorganic Arsenic", 29 CFR 1910.1025, "Lead", 29 CFR 1910.1027, "Cadmium", 29 CFR 1910.1028, "Benzene", 29 CFR 1910.1029, "Coke Oven Emissions", 29 CFR 1910.1043, "Cotton Dust", 29 CFR 1910.1044, "1,2-Dibromo-3-chloropropane", 29 CFR 1910.1045, "Acrylonitrile", 29 CFR 1910.1047, "Ethylene Oxide", 29 CFR 1910.1048, "Formaldehyde", 29 CFR 1910.1050, "Methylenedianiline", 29 CFR 1910.1051, "1,3-Butadiene", and 29 CFR 1910.1052, "Methylene Chloride", as published in the Federal Register, Volume 63, Number 5, January 9, 1998, and Volume 63, Number 78, published April 23, 1998 are incorporated by reference. These revisions delete duplicative respiratory provisions and make the standards consistent.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's occupational safety and health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these revisions; accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate these federal requirements.

(d) The benefits expected from the proposed amendments to the administrative regulation are: These revisions assure conformity with the Code of Federal regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 2, 1998

(1) Regulation number and title: **803 KAR 2:403**. Occupational health and environmental controls.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for August 27, 1998, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, or one (1) person representing the administrative body or association, agree to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to August 27, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, telephone (502) 564-3070, or facsimile the request to (502) 564-1682.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Labor Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend is 803 KAR 2:403, as follows: The revisions to 29 CFR 1926.57, "Ventilation," 29 CFR 1926.60, "Methylenedianiline," and 29 CFR 1926.62, "Lead," as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference. These revisions update references, and delete requirements for fit-testing, respirator selection, and respirator use for methylenedianiline and lead (as they are duplicative). Other amendments change the definition of U.S. Department of Labor to mean both U.S. Department of Labor and KY Labor Cabinet, and update the reference to the current Code of Federal Regulations.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's occupational safety and health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate these federal requirements.

(d) The benefits expected from the proposed amendment to the administrative regulation are: The incorporation of this revision assures conformity with the Code of Federal Regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.

(e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 2, 1998

(1) Regulation number and title: **803 KAR 2:404**. Personal protective and life saving equipment.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for August 27, 1998, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, or one (1) person representing the administrative body or association, agree to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to August 27, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, telephone (502) 564-3070, or facsimile the request to (502) 564-1682.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an admin-

VOLUME 25, NUMBER 2 – AUGUST 1, 1998

istrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Labor Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend is 803 KAR 2:404, as follows: The revisions to 29 CFR 1926.103, "Respiratory Protection," as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference. These revisions update references. Other amendments update the reference to the current Code of Federal Regulations and change the introductory paragraph to meet KRS Chapter 13A considerations.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's occupational safety and health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate these federal requirements.

(d) The benefits expected from the proposed amendment to the administrative regulation are: The incorporation of this revision assures conformity with the Code of Federal Regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.

(e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 2, 1998

(1) Regulation number and title: **803 KAR 2:418**. Underground construction, caissons, cofferdams, and compressed air.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed amendment to the administrative regulation has been scheduled for August 27, 1998, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, or one (1) person representing the administrative body or association, agree to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to August 27, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, telephone (502) 564-3070, or facsimile the request to (502) 564-1682.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Labor Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend is 803 KAR 2:418, as follows: The revisions to 29 CFR 1926.800, "Underground Construction," as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference. These revisions update references. Other amendments update the reference to the current Code of Federal Regulations and change the introductory paragraph to meet KRS Chapter 13A considerations.

(c) The necessity and function of the proposed administrative regulation is: Kentucky's occupational safety and health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to this revision; accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate these federal requirements.

(d) The benefits expected from the proposed amendment to the administrative regulation are: The incorporation of this revision assures conformity with the Code of Federal Regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.

(e) The administrative regulation will be implemented as follows: The proposed amendment to the administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

July 2, 1998

(1) Regulation number and title: **803 KAR 2:425**. Air contaminants.

(2) The Kentucky Occupational Safety and Health Standards Board intends to amend the regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed amendments to this administrative regulation has been scheduled for August 27, 1998, at 2 p.m. (E.T.), in the Bay 3 Conference Room at 1047 U.S. 127 South, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, or one (1) person representing the administrative body or association, agree to be present at the public hearing.

(b) If a request for a public hearing is not received from the required number of people at least 10 days prior to August 27, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Kentucky Labor Cabinet, OSH Standards Office, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601, telephone (502) 564-3070, or facsimile the request to (502) 564-1682.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an admin-

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

istrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Labor Cabinet at the address listed above.

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to occupational safety and health is KRS Chapter 338.

(b) The administrative regulation that the Occupational Safety and Health Standards Board intends to promulgate will amend is 803 KAR 2:425, as follows: The revisions change the "Necessity, Function, and Conformity" paragraph to meet KRS Chapter 13A considerations, update the reference to the current Code of Federal Regulations, and incorporate revisions to the asbestos and cadmium standards, as published in the Federal Register, Volume 63, Number 5, January 8, 1998, and Volume 63, Number 78, published, April 23, 1998 which delete requirements for fit-testing, respirator selection, and respirator use (as they are duplicative).

(c) The necessity and function of the proposed administrative regulation is: Kentucky's occupational safety and health program is mandated by federal law to be at least as effective as the federal program. Kentucky does not have an effective alternative to these revisions; accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate these federal requirements.

(d) The benefits expected from the proposed amendments to the administrative regulation are: These revisions assure conformity with the Code of Federal Regulations, assuring that the regulations of the Kentucky program in this area are as effective as those of the Occupational Safety and Health Administration.

(e) The administrative regulation will be implemented as follows: The proposed administrative regulation will be implemented by the Division of OSH Education and Training through its training sessions and seminars and its voluntary surveys, and by the Division of Compliance through its enforcement investigations.

### PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance

June 15, 1998

(1) **806 KAR 17:160**, Creditable coverage for health insurance.

(2) The Department of Insurance intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998, at 10 a.m. (ET), at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sharron S. Burton, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Insurance at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of this administrative regulation is 1998 RS HB 315 Section 1(6)(A)9, 1998 RS HB 315 Section 4(4)(c)1, 1998 RS HB 315 Section 4(4)(d).

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will define "public health plan" as that term is used in relation to creditable coverage. The administrative regulation will also define categories of benefits that may be used to apply to a preexisting condition exclusion based on the period of creditable coverage. Lastly, the administrative regulation provides certification forms for use in certifying periods of creditable coverage.

(c) The necessity and function of the proposed administrative regulation is as follows: 1998 RS HB 315 Section 1(6)(a)9 incorporates a "public health plan" within the definition of "creditable coverage." 1998 RS HB 315 Section 1(6)(a)9 requires the Commissioner of Insurance to define "public health plan." In addition, 1998 RS HB 315 Section 4(4)(c)2 permits the commissioner to specify categories of benefits as creditable coverage, the aggregate periods of which may be used to reduce the waiting period applicable to a preexisting condition exclusion. Lastly, with respect to creditable coverage, 1998 RS HB 315 Section 4(4)(d) permits the commissioner to specify how periods of creditable coverage may be certified.

(d) The benefits expected from administrative regulation is as follows: This administrative regulation will, by use of definitions and benefit listings, clarify the circumstances under which prior coverage may be credited in order to avoid the application of or reduce the coverage waiting period that exists due to preexisting condition exclusion clauses in new health plans.

(e) The administrative regulation will be implemented as follows: This administrative regulation provides direction and pertinent information with respect to coverage that may be credited in order to avoid the application of or reduce the waiting period for preexisting condition exclusions included in health benefit plans. Other than the enforcement of its provisions, the department will not be required to actively implement this administrative regulation.

July 1, 1998

(1) **806 KAR 17:170**, Genetic testing.

(2) The Department of Insurance intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998, at 10 a.m. (ET), at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sharron S. Burton, Kentucky

VOLUME 25, NUMBER 2 – AUGUST 1, 1998

Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Insurance at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of the administrative regulation is KRS 304.2-110.

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will define "genetic test," "genetic information," and "genetic services."

(c) The necessity and function of the proposed administrative regulation is as follows: 1998 RS HB 315 Sections 2(1)(f), 4(3)(a)2, 5(3), and 55(2), (3), and (4) each reference either "genetic test," "genetic information," or "genetic services." These terms were not specifically defined by 1998 RS HB 315. Therefore, in order to assist the insurers that must operate under the provisions of 1998 RS HB 315, it is necessary for the Commissioner of Insurance to define "genetic test," "genetic information," and "genetic services." This administrative regulation is also necessary for the Commissioner of Insurance to enforce the provisions of 1998 RS HB 315 related to genetic tests, genetic information and genetic services.

(d) The benefits expected from administrative regulation is as follows: The definitions established by this administrative regulation will enable insurers of health benefit plans to comply with the provisions of 1998 RS HB 315 that refer to genetic tests, information, and services. In addition, this administrative regulation will assist the Commissioner of Insurance in his regulatory duties as they relate to 1998 RS HB 315.

(e) The administrative regulation will be implemented as follows: The terms defined in this administrative regulation will assist insurers in their duty to comply with the provisions in 1998 RS HB 315 that relate to genetic test, genetic information, and genetic services. In addition, the commissioner will rely upon the definitions in this administrative regulation to enforce the provisions in 1998 RS HB 315 that relate to genetics.

June 17, 1998

(1) **806 KAR 17:180**, Standard health benefit plan and comparison format.

(2) The Department of Insurance intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998, at 10 a.m. (ET), at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sharron S. Burton, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Insurance at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of this administrative regulation is 1998 RS HB 315 Section 7(1) and (7)(a).

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will define the standard health benefit plan in the individual and small group markets. This administrative regulation will also prescribe a standard format for comparison of the standard plan benefits and exclusions to other comparable plans being offered.

(c) The necessity and function of the proposed administrative regulation is as follows: 1998 RS HB 315 Section 7(1) requires the commissioner to define, by regulation, one (1) standard health benefit plan that shall provide health insurance coverage in the individual and small group markets. In addition, 1998 RS HB 315 Section 7(7) requires the commissioner to prescribe a standard format for comparison of the standard plan benefits to other comparable plans, to be delivered to prospective applicants for any health insurance coverage in the individual or small group markets.

(d) The benefits expected from administrative regulation is as follows: This administrative regulation will establish a standard health benefit plan for use in the individual and small group markets. In addition, for the protection and education of health insurance consumers, this administrative regulation prescribes the format for comparing benefits of the standard plan to that of other health benefit plans.

(e) The administrative regulation will be implemented as follows: By this administrative regulation, the department will define a standard health benefit plan and the format for comparing the standard benefit plan to other health benefit plans. In addition, the department will be responsible for collecting recommendations for modifying to the standard health benefit plan. The department will be required to submit the recommendations to the Health Insurance Advisory Council for comment and make the final determination regarding the acceptance or denial of the recommendations.

July 1, 1998

(1) **806 KAR 17:190**, Guaranteed acceptance program requirements.

(2) The Department of Insurance intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998, at 10 a.m. (ET), at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sharron S. Burton, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing." or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Insurance at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of the administrative regulation is KRS 304.2-110, 1998 RS HB 315 Sections 3(5)(b), and 18.

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will establish the Guaranteed Acceptance Program (GAP) requirements. Specifically, this administrative regulation will outline GAP participating insurer requirements, establish GAP enrollment limits, define the requirements for a GAP health benefit plan, and the alternative underwriting mechanism, and identify GAP participation termination requirements.

(c) The necessity and function of the proposed administrative regulation is as follows: 1998 RS HB 315 Section 3(5)(b) requires the Commissioner of Insurance to establish equitable enrollment limits for new market insurers for the first twelve (12) months, and any remaining portion of the calendar year after the expiration of that twelve (12) month period. 1998 RS HB 315 Section 18 allows a GAP participating insurer to elect to use the alternative underwriting mechanism and requires the commissioner to approve the alternative underwriting mechanism criteria submitted by the insurer. Because these requirements relate to an insurer's participation in the GAP Program, this administrative regulation is necessary to establish the basic GAP requirements. KRS 304.2-110 authorizes the commissioner to make regulations to effect any provision of the insurance code.

(d) The benefits expected from administrative regulation are: This administrative regulation will allow persons with certain high cost illnesses or conditions to purchase health insurance at a more reasonable rate. Finally, this administrative regulation will establish criteria upon which the commissioner may base approval of an insurer's alternative underwriting guidelines. This administrative regulation will specify the enrollment limits for insurers electing to participate in GAP.

(e) The administrative regulation will be implemented as follows: This administrative regulation will establish the requirements for GAP, including enrollment limits, and AUM; and will be used to monitor GAP insurers for compliance, and evaluate the overall success of the program.

July 1, 1998

(1) **806 KAR 17:200**, Severity codes for high-cost conditions.

(2) The Department of Insurance intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998, at 10 a.m. (ET), at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sharron S. Burton, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Insurance at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of the administrative regulation is 1998 RS HB 315 Section 1(19)(b).

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. By designating an ICD code and establishing a uniform underwriting standard for each high-cost condition, this administrative regulation will establish a score or rating above which a condition is considered to be high-cost.

(c) The necessity and function of the proposed administrative regulation is as follows: 1998 RS HB 315 Section 1(19)(b) requires the Commissioner of Insurance to establish uniform underwriting standards and a score or rating above which a condition is considered to be high-cost. The commissioner is required to use the most recent version of the "International Classification of Diseases" (ICD) to identify a high-cost condition of an individual who is a Guaranteed Acceptance Program (GAP) qualified individual. This administrative regulation is necessary in order to establish, by using an ICD code and a score from a uniform underwriting questionnaire, to rate the severity for each high-cost condition.

(d) The benefits expected from administrative regulation is as follows: This administrative regulation will provide a means to determine who among insureds is eligible for GAP participation.

(e) The administrative regulation will be implemented as follows: This administrative regulation is primarily informational in that it provides codes that further define the severity of a high-cost condition. The department does not foresee that any active implementation will be required for this administrative regulation.

July 1, 1998

(1) **806 KAR 17:210**, Guaranteed Acceptance Program reporting requirements.

(2) The Department of Insurance intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998, at 10 a.m. (ET), at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.



**VOLUME 25, NUMBER 2 – AUGUST 1, 1998**

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sharron S. Burton, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Insurance at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of the administrative regulation is 1998 RS HB 315 Section 21.

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will establish the reporting requirements for insurers that are participating in or providing financial support for the Guaranteed Acceptance Program (GAP).

(c) The necessity and function of the proposed administrative regulation is as follows: 1998 RS HB 315 Section 21 requires the Department of Insurance to define, by administrative regulation, the reporting requirements for insurers participating in or providing financial support for GAP.

(d) The benefits expected from administrative regulation is as follows: This administrative regulation will prescribe the form and time schedules for insurers to report specific information regarding its GAP participating insureds, information about GAP participating insurers, and information about GAP supporting insurers.

(e) The administrative regulation will be implemented as follows: GAP participating insurers and GAP supporting insurers will be required to report information in an electronic report format and at the specified intervals prescribed by this administrative regulation. Failure to properly and timely report pursuant to this administrative regulation may result in formal administrative action.

July 1, 1998

(1) **806 KAR 17:220**, Approval criteria and requirements for reentry into the Kentucky health insurance market.

(2) The Department of Insurance intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 21, 1998, at 10 a.m. (ET), at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 21, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Sharron S. Burton, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Department of Insurance at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of an administrative regulation relating to the subject matter of the administrative regulation is KRS 304.2-110.

(b) The administrative regulation that the department intends to promulgate will not amend an existing administrative regulation. It will establish requirements for insurers requesting to reenter the Kentucky health insurance market. This administrative regulation will also establish criteria that will assist the commissioner in his decision whether to approve or disapprove the insurer's request to reenter the Kentucky market.

(c) The necessity and function of the proposed administrative regulation is as follows: KRS 304.2-110 permits the Commissioner of Insurance to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the insurance code. 1998 RS HB 315 Section 8 provides that an insurer that, on or after July 15, 1995, until April 10, 1998, issued standard health benefit plans under KRS 304.17A-160 and then ceased doing business in Kentucky, may apply to the commissioner for approval to reenter the Kentucky market. The Commissioner of Insurance is required to either approve or disapprove an insurer's request to reenter the Kentucky market. This administrative regulation is necessary to assist the commissioner in his decision to approve or disapprove the insurer's request to reenter the Kentucky market. This administrative regulation is also necessary to assure that the market reentry provisions in 1998 RS HB 315 conform to the market reentry provisions in 42 USC 300gg Section 2742.

(d) The benefits expected from administrative regulation are as follows: This administrative regulation will enable the Commissioner of Insurance to make an informed decision regarding the approval or disapproval of an insurer's request to reenter the Kentucky health insurance market. In addition, this administrative regulation will eliminate the potential conflict between the federal and state reentry provisions.

(e) The administrative regulation will be implemented as follows: Insurers must file the information required by this administrative regulation in order to be considered for reentry into the Kentucky health insurance market. The commissioner or his designee will collect and review the filed information. The commissioner or his designee will then decide whether the insurer's request for reentry should be approved or disapproved. The final determination by the commissioner regarding the insurer's request will be communicated, in writing, to the insurer.

**Department of Financial Institutions**

July 1, 1998

(1) New regulation: **808 KAR 1:031**, Repeal of 808 KAR 1:030 and 808 KAR 1:070.

(2) The Department of Financial Institutions intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 24,



VOLUME 25, NUMBER 2 – AUGUST 1, 1998

1998 at 10 a.m. at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 24, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Colleen Keefe, Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Person who wish to file this request may obtain a request form from the Department of Financial Institutions at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of the proposed administrative regulation is KRS 287.020(1), 288.610, 289.702, 290.070, 291.530.

(b) The proposed administrative regulation will repeal 808 KAR 1:030 and 1:070. 808 KAR 1:030 is no longer relevant because the Secretary of State has changed its rules regarding the filing of an amendment to articles of incorporation. 808 KAR 1:070 must be deleted because it conflicts with the provisions of KRS Chapter 13B regarding administrative hearings.

(c) The necessity and function of the proposed administrative regulation is as follows: To repeal unnecessary or improper administrative regulations.

(d) The benefits expected from the proposed administrative regulation are: It will conform the department's regulations to the governing law.

(e) The proposed administrative regulation will be implemented as follows: It will be published in financial institution law publications that are available to the regulated entities and the public.

July 1, 1998

(1) Regulation to be amended: **808 KAR 1:060**, Remote service units.

(2) The Department of Financial Institutions intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 24, 1998 at 10 a.m. at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 24, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Colleen Keefe, Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that person who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Person who wish to file this request may obtain a request form from the Department of Financial Institutions at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of the proposed administrative regulation is KRS 287.020(1), 289.702, and 290.070.

(b) The proposed administrative regulation will amend 808 KAR 1:060. It will delete restrictions that are no longer necessary or in the public interest because of advances in technology. It will reduce paperwork for the regulated entities. It will increase competitive equality between Kentucky chartered financial institutions and federally chartered financial institutions.

(c) The necessity and function of the proposed administrative regulation is as follows: To set forth a procedure for the establishment and maintenance of automated teller machines.

(d) The benefits expected from the proposed administrative regulation are: It will reduce paperwork for the regulated entities and will increase equality between the regulated entities and their federal counterparts.

(e) The proposed administrative regulation will be implemented as follows: It will be published in financial institution law publications that are available to the regulated entities and the public.

July 1, 1998

(1) Regulation to be amended: **808 KAR 3:050**, Conduct.

(2) The Department of Financial Institutions intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 24, 1998 at 10 a.m. at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 24, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Colleen Keefe, Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

(6)(a) KRS Chapter 13A provides that person who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Person who wish to file this request may obtain a request form from the Department of Financial Institutions at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of the proposed administrative regulation is KRS 290.070.

(b) The proposed administrative regulation will amend 808 KAR 3:050. It will delete the dollar amount that the commissioner allows for charitable contributions by credit unions.

(c) The necessity and function of the proposed administrative regulation is as follows: To allow credit unions greater discretion in determining amounts to contribute to civic, charitable, or service organizations.

(d) The benefits expected from the proposed administrative regulation are: It will decrease unnecessary regulatory oversight.

(e) The proposed administrative regulation will be implemented as follows: It will be published in financial institution law publications that are available to the regulated entities and the public.

July 1, 1998

(1) New regulation: **808 KAR 6:006**, Repeal of 808 KAR 6:005.

(2) The Department of Financial Institutions intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 24, 1998 at 10 a.m. at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 24, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Colleen Keefe, Attorney, Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky 40601.

(b) On a request for a public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that person who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Person who wish to file this request may obtain a request form from the Department of Financial Institutions at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of the proposed administrative regulation is KRS 288.610(1) and 291.530(2).

(b) The proposed administrative regulation will repeal 808 KAR 6:005. The provisions of 808 KAR 6:005 are contained in the governing statutes. Therefore, the regulation is unnecessary.

(c) The necessity and function of the proposed administrative regulation is as follows: To repeal an unnecessary administrative regulation.

(d) The benefits expected from the proposed administrative regulation are: It will conform the department's regulations to the governing law.

(e) The proposed administrative regulation will be implemented as follows: It will be published in financial institution law publications that are available to the regulated entities and the public.

### Department of Housing, Buildings and Construction

July 14, 1998

(1) Regulation number and title: **815 KAR 45:025**, Commission meetings and proceedings.

(2) The department intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 1 p.m., local time, on Monday, August 24, 1998, in the Department's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least one (1) person or an administrative body or an association having at least five (5) members; and

2. A minimum of five (5) persons or the administrative body or association agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least ten (10) days prior to August 24, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U. S. Highway 127 South, Suite #1, Frankfort, Kentucky 40601, Fax: (502) 564-6799.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the department's general counsel at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 95A.050(3).

(b) The department intends to amend various sections of the administrative regulation to comply with KRS Chapter 13A drafting rules but the primary changes include adding the definition of the Kentucky Community and Technical College System and replacing the services provided by the Department for Adult and Technical Education with KCTCS; and Section 4 was deleted in its entirety.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: To clarify by what means the commission will provide training for firefighters and conduct its meetings.

(d) The benefits expected from this administrative regulation are: Clarity and a better understanding by all commission members of the procedures governing the meetings.

VOLUME 25, NUMBER 2 – AUGUST 1, 1998

(e) This administrative regulation will be implemented by the Commission on Fire Protection Personnel Standards and Education.

July 14, 1998

- (1) Regulation number and title: **815 KAR 45:035**, Education incentive.
- (2) The Commission on Fire Protection Personnel Standards and Education intends to amend the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 1 p.m., local time, on Monday, August 24, 1998, in the Department's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least one (1) person or an administrative body or an association having at least five (5) members; and
  2. A minimum of five (5) persons or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least ten (10) days prior to August 24, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U. S. Highway 127 South, Suite #1, Frankfort, Kentucky 40601, Fax: (502) 564-6799.
- (b) On a request for public hearing, a persons shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the department's general counsel at the address listed above.
- (7) Information relating to the proposed administrative regulation:
  - (a) The statutory authority for the promulgation of this administrative regulation is KRS 95A.240.
  - (b) The department intends to amend various sections of the administrative regulation to comply with KRS Chapter 13A drafting rules but the primary changes include clarifying the eligibility requirements for qualified fire fighters who return to duty after an illness or other separation and receive incentive pay without being treated as a new fire fighter.
  - (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: To clarify the eligibility requirements for qualified fire fighters to receive incentive pay without being treated as a new fire fighter when returning to duty from an illness while at the same time fulfilling necessary training.
  - (d) The benefits expected from this administrative regulation are: More qualified fire fighters in the fire service.
- (e) This administrative regulation will be implemented by the Commission on Fire Protection Personnel Standards and Education.

July 14, 1998

- (1) Regulation number and title: **815 KAR 45:060**, Survivor benefits for death of a fire fighter.
- (2) The Commission on Fire Protection Personnel Standards and Education intends to amend the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 1 p.m., local time, on Monday, August 24, 1998, in the Department's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least one (1) person or an administrative body or an association having at least five (5) members; and
  2. A minimum of five (5) persons or the administrative body or association agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least ten (10) days prior to August 24, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U. S. Highway 127 South, Suite #1, Frankfort, Kentucky 40601, Fax: (502) 564-6799.
- (b) On a request for public hearing, a persons shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the department's general counsel at the address listed above.
- (7) Information relating to the proposed administrative regulation:
  - (a) The statutory authority for the promulgation of this administrative regulation is KRS 61.315(3).
  - (b) The department intends to amend various sections of the administrative regulation to comply with KRS Chapter 13A drafting rules but the primary change is the clarification that both professional and volunteer fire fighters are to receive benefits when a fire fighter is lost in the line of duty.
  - (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: To clarify that the services of both professional and volunteer firefighters receive benefits when a fire fighter is killed in the line of duty and to establish the process for obtaining those benefits.
  - (d) The benefits expected from this administrative regulation are: Clarification in the process of obtaining survivor benefits when a professional or volunteer fire fighter is killed in the line of duty.
- (e) This administrative regulation will be implemented by the Commission on Fire Protection Personnel Standards and Education.

July 14, 1998

- (1) Regulation number and title: **815 KAR 45:080**, Volunteer fire department aid.
- (2) The Commission on Fire Protection Personnel Standards and Education intends to amend the administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 1 p.m., local time, on Monday, August 24, 1998, in the Department's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least one (1) person or an administrative body or an association having at least five (5) members; and
  2. A minimum of five (5) persons or the administrative body or association agree, in writing, to be present at the public hearing.

**VOLUME 25, NUMBER 2 – AUGUST 1, 1998**

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least ten (10) days prior to August 24, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U. S. Highway 127 South, Suite #1, Frankfort, Kentucky 40601, Fax: (502) 564-6799.

(b) On a request for public hearing, a persons shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the department's general counsel at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 95A.262(2).

(b) The department intends to amend various sections of the administrative regulation to comply with KRS Chapter 13A drafting rules but the primary changes include deleting the definition of "full time paid fire fighter" as unnecessary; adding a paragraph to indicate that effective January, 2001, a fire fighter listed on a fire department roster qualifying that department for incentive pay may not be listed on another fire department roster in order to qualify it; and a clarification that fire department must provide proof of purchase of expenditures for the previous year's aid by June 30 each year.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: To allot funds to local volunteer fire departments in order to promote better fire protection through better facilities and equipment.

(d) The benefits expected from this administrative regulation are: Better fire protection through better facilities and equipment.

(e) This administrative regulation will be implemented by Commission on Fire Protection Personnel Standards and Education.

July 14, 1998

(1) Regulation number and title: **815 KAR 45:090**, Certification and qualifications of fire protection instructors.

(2) The Commission on Fire Protection Personnel Standards and Education intends to amend the administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 1 p.m., local time, on Monday, August 24, 1998, in the Department's Conference Room at 1047 U.S. Highway 127 South, Suite #1, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least one (1) person or an administrative body or an association having at least five (5) members; and
2. A minimum of five (5) persons or the administrative body or association agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing and agreement to attend the public hearing are not received from the required number of people at least ten (10) days prior to August 24, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Honorable Judith G. Walden, General Counsel, Department of Housing, Buildings and Construction, 1047 U. S. Highway 127 South, Suite #1, Frankfort, Kentucky 40601, Fax: (502) 564-6799.

(b) On a request for public hearing, a persons shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the department's general counsel at the address listed above.

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the promulgation of this administrative regulation is KRS 95A.050(3).

(b) The department intends to amend various sections of the administrative regulation to comply with KRS Chapter 13A drafting rules but the primary changes include new and amended definitions; and amend the training hours needed to become a Level III instructor.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: To set forth the certification requirements for and justification of fire protection instructors.

(d) The benefits expected from this administrative regulation are: To better identify the training requirements and entities of who conducts the training of firefighters.

(e) This administrative regulation will be implemented by the Commission of Fire Protection Personnel Standards and Education.

**CABINET FOR HEALTH SERVICES  
Office of Inspector General**

June 29, 1998

(1) **900 KAR 2:020** – Appeals.

(2) The Office of Inspector General intends to promulgate the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 31, 1998, at 9 a.m. in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members, and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 31, 1998, the public hearing will be canceled.

(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the General Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an admin-

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

istrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from: Administrative Regulation Coordinator, Office of Inspector General, 275 East Main Street, 4E-A, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans with Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the amendment of administrative regulations relating to the quality of care rating system for long-term care facilities is HB679 enacted during the 1998 Regular Session of the General Assembly.

(b) The cabinet intends to amend 900 KAR 2:020 to delete appeals from assignment of ratings pursuant to 900 KAR 2:030, which is being repealed. Other amendments will comply with drafting requirements of KRS Chapter 13A.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: Amendments deleting appeals of ratings are necessary because KRS 216.550, requiring the cabinet to establish a system for rating the quality of care provided by long-term care facilities, and KRS 216.553, granting the right to appeal such ratings, have been repealed.

(d) The benefits expected are that the quality of care provided by long-term care facilities will not be determined by their required performance.

(e) The administrative regulation will be implemented as follows: By the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Health Services.

### Department for Public Health Division of Local Health Department Operations

July 15, 1998

(1) **902 KAR 8:019**, Repealer regulation for 902 KAR 8:020, Policies and procedures for local health department operations.

(2) The Cabinet for Health Services, Department for Public Health, Division of Local Health Department Operations, intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for August 31, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least five members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 31, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae.Lewis, Cabinet Regulation Coordinator, Office of the Counsel, Cabinet for Health Services, 275 East Main Street, 4-West, Frankfort, Kentucky 40621, (502) 564-7905, Fax: (502) 564-7573:

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Public Health, Commissioner's Office, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulations.

(a) The statutory authority for the promulgation of this administrative regulation relating to 902 KAR 8:019 is KRS 194.050, 211.090, and 211.180.

(b) The new administrative regulation that the Cabinet for Health Services, Department for Public Health, intends to promulgate, concerns the repeal of outdated requirements for operation of boards of health and local health departments.

(c) The necessity, function and conformity of the proposed administrative regulation are as follows: KRS 211.050, 211.090 and 212.230 require the cabinet to supervise and assist Kentucky's local boards of health and local health departments in carrying out the provisions of law and in undertaking their public health functions and responsibilities.

(d) The benefits expected from the administrative regulation are: Elimination of outdated requirements for the operation and functioning of local health departments and boards of health.

(e) The administrative regulation will be implemented as follows: The Divisions of Local Health Department Operations and Adult and Child Health, Department for Public Health will be responsible for notifying health departments and boards of health of the repeal of 902 KAR 4:050, 902 KAR 4:100 and 902 KAR 8:020 and of the implementation of new administrative regulations. The divisions will also provide training on the new regulations.

July 15, 1998

(1) **902 KAR 8:022**, Board of health requirements.

(2) The Cabinet for Health Services, Department for Public Health, Division of Local Health Department Operations, intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 31, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least five members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 31, 1998, the public hearing will be cancelled.

VOLUME 25, NUMBER 2 – AUGUST 1, 1998

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Office of the Counsel, Cabinet for Health Services, 275 East Main Street, 4-West, Frankfort, Kentucky 40621, (502) 564-7905, Fax: (502) 564-7573.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Public Health, Commissioner's Office, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulations.

(a) The statutory authority for the promulgation of the administrative regulation relating to 902 KAR 8:022 is KRS 194.050 and 211.180.

(b) The new administrative regulation that the Cabinet for Health Services, Department for Public Health, intends to promulgate, concerns requirements for the functioning of Kentucky's Local Boards of Health.

(c) The necessity, function and conformity of the proposed administrative regulation are as follows: KRS 211.025, 211.090 and 212.230 require the cabinet to supervise and assist Kentucky's Local Boards of Health in carrying out the provisions of law and in undertaking the Local Boards' public health functions and responsibilities.

(d) The benefits expected from the administrative regulation are: All administrative and management requirements of Kentucky's Boards of Health will be streamlined and consolidated in one definitive regulation.

(e) The administrative regulation will be implemented as follows: The Division of Local Health Department Operations, Department for Public Health will be responsible for providing technical assistance, consultation, and training to all local health departments on interpreting and implementing the uniform standards/policies developed through this administrative regulation.

July 15, 1998

(1) **902 KAR 8:023**, Local health department operations requirements.

(2) The Cabinet for Health Services, Department for Public Health, Division of Local Health Department Operations, intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 31, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least five members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 31, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Office of the Counsel, Cabinet for Health Services, 275 East Main Street, 4-West, Frankfort, Kentucky 40621, (502) 564-7905, Fax: (502) 564-7573.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Public Health, Commissioner's Office, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulations.

(a) The statutory authority for the promulgation of the administrative regulation relating to 902 KAR 8:023 is KRS 194.050 and KRS 211.180.

(b) The new administrative regulation that the Cabinet for Health Services, Department for Public Health, intends to promulgate, concerns operational requirements for local health departments.

(c) The necessity, function and conformity of the proposed administrative regulation are as follows: KRS 211.025, 211.090, 211.170 and 211.180 require the Cabinet to supervise and assist Kentucky's Local Health Departments in carrying out the provisions of law and in fulfilling local health departments' public health functions and responsibilities.

(d) The benefits expected from this proposed administrative regulation are: Updating of the administrative and operational requirements for Kentucky's local health departments; consolidating and streamlining operational requirements in one regulation which will facilitate easy reference for Kentucky's local health departments, public health managers and the general public.

(e) The administrative regulation will be implemented as follows: The Division of Local Health Department Operations, Department for Public Health will provide technical assistance and training to all local health departments on implementing the uniform policies developed through this administrative regulation.

July 15, 1998

(1) **902 KAR 8:024**, Local health department accounting/auditing requirements.

(2) The Cabinet for Health Services, Department for Public Health, Division of Resource Management, intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for August 31, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least five members; and

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

- 2.A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 31, 1998, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Office of the Counsel, Cabinet for Health Services, 275 East Main Street, 4-West, Frankfort, Kentucky 40621, (502) 564-7905, Fax: (502) 564-7573.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Public Health, Commissioner's Office, 275 East Main Street, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).
- (7) Information relating to the proposed administrative regulations.
- (a) The statutory authority for the promulgation of this administrative regulation relating to 902 KAR 8:024 is KRS 194.050 and 211.180.
- (b) The new administrative regulation that the Cabinet for Health Services, Department for Public Health, intends to promulgate concerns the accounting and auditing requirements for Kentucky's local public health departments.
- (c) KRS 211.170 requires the cabinet to supervise Local Health Departments' financial functions.
- (d) Implementation of this regulation will provide consistency and uniformity in auditing and accounting requirements for all local health departments.
- (e) The administrative regulation will be implemented as follows: The Division of Resource Management, Department for Public Health will be responsible for the implementation of this new administrative regulation.

July 15, 1998

- (1) **902 KAR 8:025**, Local health department financial management requirements.
- (2) The Cabinet for Health Services, Department for Public Health, Division of Resource Management, intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for August 31, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least five members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 31, 1998, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Office of the Counsel, Cabinet for Health Services, 275 East Main Street, 4-West, Frankfort, Kentucky 40621, (502) 564-7905, Fax: (502) 564-7573.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Public Health, Commissioner's Office, 275 East Main Street, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).
- (7) Information relating to the proposed administrative regulations.
- (a) The statutory authority for the promulgation of this administrative regulation relating to 902 KAR 8:025 is KRS 194.050 and 211.180.
- (b) The new administrative regulation that the Cabinet for Health Services, Department for Public Health, intends to promulgate concerns the financial management requirements and standards for Kentucky's local public health departments.
- (c) KRS 211.170 mandates that the Cabinet for Health Services establish policies and standards of operation for Kentucky's local public health departments. This administrative regulation establishes minimum fiscal and financial management requirements for Kentucky's local health departments.
- (d) Implementation of this regulation will provide consistency and uniformity in financial management requirements for Kentucky's local health departments.
- (e) The administrative regulation will be implemented as follows: The Division of Resource Management, Department for Public Health will be responsible for the implementation of this new administrative regulation.

July 15, 1998

- (1) **902 KAR 8:026**, Public health taxing district requirements.
- (2) The Cabinet for Health Services, Department for Public Health, Division of Resource Management, intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for August 31, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least five members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 31, 1998, the public hearing will be cancelled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet



## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

Regulation Coordinator, Office of the Counsel, Cabinet for Health Services, 275 East Main Street, 4-West, Frankfort, Kentucky 40621, (502) 564-7905, Fax: (502) 564-7573.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Public Health, Commissioner's Office, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulations.

(a) The statutory authority for the promulgation of this administrative regulation relating to 902 KAR 8:026 is KRS 194.050 and KRS 211.180.

(b) The new administrative regulation that the Cabinet for Health Services, Department for Public Health, intends to promulgate concerns requirements for the operation and expenditure of funds of local public health taxing districts.

(c) KRS 65.070 permits state agencies to establish policies and procedures governing taxing districts which are affiliated with agencies under their supervision; KRS 211.170 requires the cabinet to establish policies governing the financial operations of local health departments. This administrative regulation establishes minimum administrative and operational requirements for Kentucky's local public health taxing districts.

(d) Implementation of this regulation will provide consistency and uniformity in financial management requirements for Kentucky's public health taxing districts.

(e) The administrative regulation will be implemented as follows: The Division of Resource Management, Department for Public Health will be responsible for the implementation of this new administrative regulation.

July 15, 1998

(1) **902 KAR 8:027**, Local health department unique grantor requirements.

(2) The Cabinet for Health Services, Department for Public Health, Division of Adult and Child Health, intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulations has been scheduled for August 31, 1998, at 9 a.m., in the Cabinet for Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least five members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 31, 1998, the public hearing will be cancelled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Office of the Counsel, Cabinet for Health Services, 275 East Main Street, 4-West, Frankfort, Kentucky 40621, (502) 564-7905, Fax: (502) 564-7573.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Public Health, Commissioner's Office, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulations.

(a) The statutory authority for the promulgation of this administrative regulation relating to 902 KAR 8:027 is KRS 194.050 and 211.180.

(b) The new administrative regulation that the Cabinet for Health Services, Department for Public Health intends to promulgate will set forth the updated administrative requirements for public health services provided by Kentucky's local public health departments.

(c) The necessity, function and conformity of the proposed administrative regulations is as follows: KRS 211.025 and 211.090 require the cabinet to supervise and assist Kentucky's local health departments and boards of health in carrying out public health functions and responsibilities.

(d) The benefits expected from these proposed administrative regulations are: Updating of the administrative and management requirements for public health services provided by Kentucky's local health departments, ease of reference for Kentucky's local health departments, Department for Public Health managers, and the public.

(e) The administrative regulation will be implemented as follows: The Division of Adult and Child Health, Department for Public Health, will provide technical assistance, consultation, and training to all local health departments on interpreting and implementing the standards developed through this administrative regulation.

July 15, 1998

(1) **902 KAR 8:028**, Local health department environmental health program standards.

(2) The Cabinet for Health Services, Department for Public Health, Division of Public Health Protection and Safety, intends to promulgate an administrative regulation governing the subject matters cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for 9 a.m., August 31, 1998 in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and



## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 31, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of Counsel, 275 East Main Street, 4-West, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, FAX: (502) 564-7573.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Public Health, Commissioner's Office, 275 East Main Street, Frankfort, Kentucky 40621, or by calling 502-564-3970 between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.
- (c) Note: Requests for Notification and the Notice of Intent to promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).
- (7) Information relating to the proposed administrative regulations.
- (a) The statutory authority for the promulgation of these administrative regulations relating to 902 KAR 8:028 is KRS 211.070; 194.050; 211.180; 211.345; 211.350 - 211.380; 211.350 - 211.380; 211.357; 211.760 and 211.990; 211.920 - 211.945; 211.972 - 211.982 and 211.995; 212.210 and 219.990; 212.210 and 219.990; 217.285 - 217.285 and 217.992; 217.808 - 217.812; 219.011 - 219.082; 219.310 - 219.410 and 219.991; 221.010 - 221.110 and 221.990.
- (b) The administrative regulation that the Cabinet for Health Services, Department for Public Health, intends to promulgate, concerns the minimum local health department requirements for administration of the environmental health programs.
- (c) The necessity, function and conformity of the proposed administrative regulations are as follows: Establishes operation standards for local health departments in administering environmental health programs.
- (d) The benefits expected from the administrative regulation are: Uniform administration and enforcement of the environmental health programs.
- (e) The administrative regulation will be implemented as follows: The Division of Public Health Protection and Safety, Department for Public Health, will be responsible for the implementation of the administrative regulation.

### Office of Inspector General

June 29, 1998

- (1) **902 KAR 20:036** - Operation and services; personal care homes.
- (2) The Office of Inspector General intends to promulgate the administrative regulation cited above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 31, 1998, at 9 a.m. in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.
- (4)(a) The public hearing will be held if:
1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members, and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 31, 1998, the public hearing will be canceled.
- (a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the General Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.
- (b) On a request for public hearing, a person shall state:
1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from: Administrative Regulation Coordinator, Office of Inspector General, 275 East Main Street, 4E-A, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans with Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).
- (7) Information relating to the proposed administrative regulation:
- (a) The statutory authority for the amendment of administrative regulations relating to persons listed on the nurse aide abuse registry working for long-term care facilities is HB621 enacted during the 1998 Regular Session of the General Assembly.
- (b) The cabinet intends to amend 902 KAR 20:036 at Section 3(8) to address the prohibition against the operation by or employment of persons listed on the nurse aide abuse registry. Section 4(1)(b) and (c) will be amended to recognize that clinical personnel may prescribe medication within the limits of their statutory scope of practice. Other amendments will comply with drafting requirements of KRS Chapter 13A.
- (c) The necessity, function, and conformity of the proposed administrative regulation is as follows: To comply with the mandate of KRS 216B.042 and 216B.105 in the establishment of licensure requirements for the operation of personal care homes.
- (d) The benefits expected from these proposed amendments are that they will prohibit persons listed on the nurse aide abuse registry to operate or be employed by a personal care home, and will permit clinical personnel to perform tasks within the limits of their statutory scope of practice.
- (e) The administrative regulation will be implemented as follows: By the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Health Services.

**VOLUME 25, NUMBER 2 – AUGUST 1, 1998**

**CABINET FOR FAMILIES AND CHILDREN  
Department for Social Insurance  
Division of Management and Development**

July 15, 1998

(1) **904 KAR 2:490**, Welfare to Work Grant Program.

(2) Cabinet for Families and Children, Department for Social Insurance intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 31, 1998, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 31, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Judy Trigg, Regulation Coordinator, Cabinet for Families and Children, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, FAX: (502) 564-7573.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Social Insurance, Division of Management and Development, Third Floor West, CHR Building, 275 East Main, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Families and Children's regulations may call toll free 1-800-372-2973 (V/TTY).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Kentucky Transitional Assistance Program (K-TAP), KRS 205.200(2), HB 132 (1998) and 42 USC 601 et seq.

(b) The administrative regulation that the Department for Social Insurance intends to promulgate will be a new administrative regulation 904 KAR 2:490. In 904 KAR 2:490, the cabinet will assist long-term Kentucky Transitional Assistance Program (K-TAP) recipients, noncustodial parents of minors whose custodial parents are long-term welfare recipients and former K-TAP recipients to move into unsubsidized employment and to become self-sufficient.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation is necessary to enable the Cabinet for Families and Children to qualify to receive federal funds under the Welfare to Work Grant Program in accordance with 20 CFR Part 645 of the Social Security Act, Title IV, Part A, as amended by the Balanced Budget Act of 1997.

(d) The benefits expected from administrative regulation are: This administrative regulation will assist long-term Kentucky Transitional Assistance Program (K-TAP) recipients, noncustodial parents of minors whose custodial parents are long-term welfare recipients and former K-TAP recipients to move into unsubsidized employment and to become self-sufficient.

(e) The administrative regulation will be implemented as follows: The Cabinet for Families and Children will be responsible for implementing the administrative regulation.

**Department for Community Based Services  
Division of Policy Development**

July 15, 1998

(1) **904 KAR 3:025**, Technical requirements for the Food Stamp Program.

(2) Cabinet for Families and Children, Department for Community Based Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 31, 1998, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 31, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Judy H. Trigg, Regulation Coordinator, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street, 4th West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (fax).

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Community Based Services, Division of Policy Development, Third Floor West, CHR Building, 275 East Main, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Families and Children's regulations may call toll free 1-800-372-2973 (V/TTY).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Food Stamp Program is KRS 194.050, 1998

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

Ky. Acts Chapter 150 and Executive Order 98-731, which reorganizes the Cabinet for Families and Children and abolishes the Department for Social Insurance and places its programs under the Department for Community Based Services.

(b) The administrative regulation that the Department for Community Based Services intends to promulgate is a proposed amendment to administrative regulation, 904 KAR 3:025. The proposed administrative regulation implements the Food Stamp Program technical eligibility requirements relating to citizenship and alien status that are mandated by 8 USC 1611 et seq. as amended by S. 1150.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the technical eligibility requirements used by the cabinet in the administration of the Food Stamp Program.

(d) The benefits expected from administrative regulation are: This amendment will prevent a loss of federal funds by timely implementing the requirements mandated by 8 USC 1611 et seq. as amended by S. 1150. Further, implementation of the federal mandates will afford new categories of alien immigrants the opportunity of obtaining a nutritious diet by participating in the Food Stamp Program, thereby eliminating a threat to public health.

(e) The administrative regulation will be implemented as follows: This administrative regulation will be administered by the Department for Community Based Services, Division of Policy Development. Policy materials will be disseminated to staff through the Field Services Operation Manual.

July 15, 1998

(1) **904 KAR 3:042**, Food Stamp Employment and Training Program.

(2) Cabinet for Families and Children, Department for Community Based Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 31, 1998, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 31, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Judy H. Trigg, Regulation Coordinator, Cabinet for Families and Children, Office of the General Counsel, 275 East Main Street, 4<sup>th</sup> West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (fax).

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Community Based Services, Division of Policy Development, Third Floor West, CHR Building, 275 East Main, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Families and Children's regulations may call toll free 1-800-372-2973 (V/TTY).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the Food Stamp Program is KRS 194.050, 1998 Ky. Acts Chapter 150 and Executive Order 98-731, which reorganizes the Cabinet for Families and Children and abolishes the Department for Social Insurance and places its programs under the Department for Community Based Services.

(b) The administrative regulation that the Department for Community Based Services intends to promulgate is a proposed amendment to administrative regulation, 904 KAR 3:042. The proposed administrative regulation is necessary due to funding restrictions pursuant to Section 1002 of PL 105-33 which amends 7 USC 2025(h). The amendments include form revisions, deleting references to the Department for Employment Services, as appropriate, deleting participation of volunteers, eliminating priority status except for individuals subject to the work requirement pursuant to Section 3(8) of 904 KAR 3:025, deleting ineligible components, redefining the definition for "skills training", deleting the provisions of dependent care as they relate to able-bodied adults without dependents, clarifying the applicability of good cause as it relates to 904 KAR 3:025, Section 3(8), and redefining the workfare component to include a job search activity.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the technical eligibility requirements used by the cabinet in the administration of the Food Stamp Employment and Training Program, including the Work Experience Program component, and the requirements of the Community Service Program.

(d) The benefits expected from administrative regulation are: This amendment will prevent a loss of federal funds by timely implementing the requirements mandated by Section 1002 of PL 105-33 which amends 7 USC 2025(h).

(e) The administrative regulation will be implemented as follows: This administrative regulation will be administered by the Department for Community Based Services, Division of Policy Development. Policy materials will be disseminated to staff through the Field Services Operation Manual.

July 14, 1998

(1) **905 KAR 1:180**, DSS policy and procedural manual.

(2) Cabinet for Families and Children, Department for Community Based Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 31, 1998 at 9 a.m., in the Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky 40621.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 31, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Judy Trigg, Cabinet for Families and Children, Cabinet Regulation Coordinator, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

VOLUME 25, NUMBER 2 – AUGUST 1, 1998

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Community Based Services, Division of Policy Development, CHR Building, 3<sup>rd</sup> Floor East, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Families and Children's regulations may call toll free 1-800-372-2973 (V/TTY).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the DSS policy and procedures manual are KRS 194.050(1), 199.420, 200.080, 209.030, 605.150, 615.050, 620.180, 625.120, 630.140, 1998 Ky. Acts ch. 426, ch. 150, ch. 398, ch. 57, ch. 395, ch. 527, ch. 538, ch. 443, ch. 253, 42 USC 5106a, PL 105-89 and EO 98-731.

(b) The administrative regulation that the Department for Community Based Services intends to promulgate will amend 905 KAR 1:180, DSS policy and procedures manual to include requirements from HB 449, HB 142, HB 518, HB 617, HB 689, HB 690, SB 128 (all legislation passed in the 1998 General Assembly), 42 USC 5106a and PL 105-89 within the incorporated policy and procedures manual. The changes are as follows: the revision of foster care rates; the development of a written transfer summary; reduces the time frame for permanency reviews by the District Court from 18 months to 12 months; provides notification of hearings to caregivers, the court-appointed special advocate, and the foster care review board member assigned to the case; requires the termination of commitment for children in cabinet custody upon attainment of 18 years of age unless extension is planned; lowers the threshold for intervention by the courts and DCBS in emergency situations; prevents children from undergoing abuse or neglect when their parent(s) have a past history of abuse or neglect of other children; expedites the process for permanency when a termination of parental rights has been filed; amends the definition of abused or neglected children; provides the District Court with a specific set of relevant factors to be considered in determining the best interest of the child; allows for cabinet appeal of Juvenile Court decisions where the cabinet is the petitioner; requires permanency hearing to be held by the court within 30 days after a determination is made that reasonable efforts are not required; requires petition to terminate parental rights if a child has been in foster care for 15 of the most recent 22 months; requires the cabinet to establish uniform conditions, requirements, and exceptions relating to child-placing and child-caring facility agencies and include such in administrative regulations; amends the definition of "state agency children" and redefines "child-caring facility" and "group home"; amendments relating to juvenile justice; amendments relating to the newly established Kentucky Children's Health Insurance Program for the purposes of providing coordinated services to children.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: 42 USC 9901-9912 "Block Grants for Social Services - Title XX", authorizes grants to states for social services. KRS 194.050(1) authorizes the Cabinet for Families and Children to adopt administrative regulations as are necessary to implement programs mandated by federal law, or to qualify for receipt of federal funds and as are necessary to cooperate with federal agencies for the proper administration of the cabinet and its programs. This administrative regulation is amended to incorporate into regulatory form, by reference, materials used by the cabinet in the implementation of a statewide social service program.

(d) The benefits expected from administrative regulation are: This amendment implements required provisions passed in the 1998 General Assembly.

(e) The administrative regulation will be implemented as follows: By the Division of Policy Development, Department for Community Based Services, Cabinet for Families and Children.

July 14, 1998

(1) **905 KAR 1:320**, Fair hearing.

(2) Cabinet for Families and Children, Department for Community Based Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 31, 1998 at 9 a.m., in the Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky, 40621.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 31, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Judy Trigg, Cabinet for Families and Children, Cabinet Regulation Coordinator, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Community Based Services, Division of Policy Development, CHR Building, 3<sup>rd</sup> Floor East, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Families and Children's regulations may call toll free 1-800-372-2973 (V/TTY).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to fair hearings are KRS 194.050, 1998 Ky. Acts ch. 426, ch. 150 and EO 98-731.

(b) The administrative regulation that the Department for Community Based Services intends to promulgate will amend 905 KAR 1:320, Fair hearing to include requirements from 42 USC 5106a. These amendments will provide due process through notification by certified mail to all alleged perpetrators of substantiated abuse investigations, of their appeal rights if they disagree with the findings.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: Under Titles IV-A, IV-B, IV-C, IV-E, and Title XX of the Social Security Act, the single state agency responsible for the program shall be required by federal regulation, 45 CFR 205.10, to provide a hearing to an applicant or recipient who is aggrieved by an agency action resulting in denial, suspension, reduction, discrimina-

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

tion, exclusion or termination of services. The Department for Community Based Services has assured various federal agencies that it shall comply with the provisions of 29 USC 794, 42 USC 5106a, 42 USC 12101 et seq., 42 USC 2000a et seq., and with 45 CFR 205.10. This administrative regulation amends provisions to comply with requirements of KRS 13B.005 to 13B.170.

(d) The benefits expected from administrative regulation are: The implementation of provisions for due process for alleged perpetrators as passed in the 1998 General Assembly.

(e) The administrative regulation will be implemented as follows: by the Division of Policy Development, Department for Community Based Services, Cabinet for Families and Children.

July 14, 1998

(1) **905 KAR 1:330**, Child protective services.

(2) Cabinet for Families and Children, Department for Community Based Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 31, 1998 at 9 a.m., in the Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky, 40621.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 31, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Judy Trigg, Cabinet for Families and Children, Cabinet Regulation Coordinator, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Community Based Services, Division of Policy Development, CHR Building, 3<sup>rd</sup> Floor East, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Families and Children's regulations may call toll free 1-800-372-2973 (V/TTY).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to child protective services are KRS 194.050, 605.150, 620.180, 1998 Ky. Acts ch. 57, ch. 339, ch. 303, 42 USC 5106a and PL 105-89, 1998 Ky. Acts ch. 150 and EO 98-731.

(b) The administrative regulation that the Department for Community Based Services intends to promulgate will amend 905 KAR 1:330, Child protective services to: lower the threshold for intervention by the courts and DCBS in emergency situations; prevent children from undergoing abuse or neglect when their parent(s) have a past history of abuse or neglect of other children; amend the definition of abused or neglected children; define the term "near fatality"; amend the requirements for disclosure of information by the cabinet; maintain a computerized central registry; provide due process through notification by certified mail to all alleged perpetrators of substantiated abuse investigations.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 194.050 requires the Secretary for the Cabinet for Families and Children to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the Cabinet for Families and Children. This administrative regulation sets forth the procedures for child protection investigations of abuse, neglect, or dependency by the Department for Community Based Services in compliance with KRS 605.150 and 620.180.

(d) The benefits expected from administrative regulation are: The implementation of provisions which amend the child protective services statutes as passed by the 1998 General Assembly.

(e) The administrative regulation will be implemented as follows: by the Division of Policy Development, Department for Community Based Services, Cabinet for Families and Children.

July 14, 1998

(1) **905 KAR 1:370**, Criteria for out-of-state placement.

(2) Cabinet for Families and Children, Department for Community Based Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 31, 1998 at 9 a.m., in the Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky, 40621.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 31, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Judy Trigg, Cabinet for Families and Children, Cabinet Regulation Coordinator, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Community Based Services, Division of Policy Development, CHR Building, 3<sup>rd</sup> Floor East, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Families and Children's regulations may call toll free 1-800-372-2973 (V/TTY).

(7) Information relating to the proposed administrative regulation.

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

(a) The statutory authority for the promulgation of an administrative regulation relating to the criteria for out-of-state placement are KRS 194.050, 199.011, 199.640, 199.670, 205.634, 1998 Ky. Acts ch. 426, ch. 527, ch. 150, and EO 98-731.

(b) The administrative regulation that the Department for Community Based Services intends to promulgate is a new regulation which sets forth the criteria for out-of-state placement as required by 1998 Ky. Acts ch. 527 (HB 617). This new regulation will provide clear criteria for out-of-state placement of children committed to the Department for Community Based Services which identifies the availability of providers of residential care and establishes uniform conditions requiring exceptions for the determination of the availability of in-state providers of residential care; establish guidelines relating to the licensing of child-placing and child-caring agencies; establish areas of jurisdiction in out-of-state placement of children.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 194.050 requires the Secretary for the Cabinet for Families and Children to promulgate administrative regulations necessary to operate programs and fulfill the responsibilities vested in the Cabinet for Families and Children. This administrative regulation sets forth the criteria for out-of-state placement of children committed to the Department for Community Based Services in compliance with 1998 Ky. Acts ch. 527, enacted by the 1998 General Assembly, including the establishment of a formal dispute process for deficiencies and their resolution and established areas of jurisdiction.

(d) The benefits expected from administrative regulation are: This regulation sets forth criteria for out-of-state placements as passed in the 1998 General Assembly.

(e) The administrative regulation will be implemented as follows: by the Division of Policy Development, Department for Community Based Services, Cabinet for Families and Children.

July 14, 1998

(1) **905 KAR 2:090**, Child care facility licensure.

(2) Cabinet for Families and Children, Department for Community Based Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 31, 1998 at 9 a.m., in the Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky, 40621.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 31, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Judy Trigg, Cabinet for Families and Children, Cabinet Regulation Coordinator, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Community Based Services, Division of Policy Development, CHR Building, 3<sup>rd</sup> Floor East, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Families and Children's regulations may call toll free 1-800-372-2973 (V/TTY).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to child care facility licensure are KRS 194.050, 199.896(2), 1998 Ky. Acts ch. 524, 1998 Ky. Acts ch. 150 and EO 98-731.

(b) The administrative regulation that the Department for Community Based Services intends to promulgate will amend 905 KAR 2:090, Child care facility licensure, to implement the requirements of 1998 Ky. Acts ch. 524. These requirements include: prohibiting employment of persons convicted of any sexual offense with any child-caring facility or child-placing facility; allowing public access to:

1. Information about child care regulatory standards;
2. Records relating to denials, suspensions, and revocations of licenses;
3. Due process right to file a complaint against a child care provider.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 199.896(2) grants authority to the Cabinet for Families and Children to establish administrative regulations and standards for day care of children. The function of this administrative regulation is to establish licensure requirements for child day care facilities.

(d) The benefits expected from this amended administrative regulation are: Broader protection for children, improved public access and better quality licensed child care, as passed by the 1998 General Assembly.

(e) The administrative regulation will be implemented as follows: by the Division of Policy Development, Department for Community Based Services, Cabinet for Families and Children.

July 14, 1998

(1) **905 KAR 2:100**, Certification of family child care homes.

(2) Cabinet for Families and Children, Department for Community Based Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 31, 1998 at 9 a.m., in the Health Services Auditorium, Health Services Building, first floor, 275 East Main Street, Frankfort, Kentucky, 40621.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 31, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Judy Trigg, Cabinet for Families and Children, Cabinet Regulation Coordinator, Office of the General Counsel, 275 East Main Street - 4th Floor West, Frankfort, Kentucky 40621, (502) 564-7900, (502) 564-7573 (Fax).

(b) On a request for public hearing, a person shall state:



**VOLUME 25, NUMBER 2 – AUGUST 1, 1998**

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Community Based Services, Division of Policy Development, CHR Building, 3<sup>rd</sup> Floor East, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Families and Children's regulations may call toll free 1-800-372-2973 (V/TTY).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the certification of family child care homes is KRS 13B.005 TO 13B.170, 194.050, 199.898(2), 1998 Ky. Acts ch. 426, ch. 524, ch. 150 and EO 98-731.

(b) The administrative regulation that the Department for Community Based Services intends to promulgate will implement requirements found in 1998 Ky. Acts ch. 524 (HB 583) enacted by the 1998 General Assembly. These requirements include: prohibiting the employment of persons convicted of any sexual offense with any family child care home; allowing public access to:

1. Information about child care regulatory standards;
2. Records relating to denials, suspensions, revocations of licenses of the family child care home;
3. The right to file a complaint against the family child care home provider.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: KRS 194.050 provides that the Secretary for the Cabinet for Families and Children shall adopt administrative regulations necessary to operate programs and fulfill the responsibilities vested in the cabinet. In compliance with KRS 199.8982, the Department for Community Based Services has established standards for the certification of family child care homes. These standards are intended to protect the health, safety and welfare of children.

(d) The benefits expected from administrative regulation are: The broader protection of children through improved public access to information relating to child care certification that will provide parents with the ability to make informed choices about child day care for their children and better quality family child care homes, as passed in the 1998 General Assembly.

(e) The administrative regulation will be implemented as follows: By the Division of Policy Development, Department for Community Based Services, Cabinet for Families and Children.

**CABINET FOR HEALTH SERVICES  
Office of Inspector General**

June 29, 1998

(1) **906 KAR 1:110** - Rural primary-care hospital services.

(2) The Office of Inspector General intends to promulgate the administrative regulation cited above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 31, 1998, at 9 a.m. in the Cabinet for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members, and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 31, 1998, the public hearing will be canceled.

(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the General Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, Fax: (502) 564-7573.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from: Administrative Regulation Coordinator, Office of Inspector General, 275 East Main Street, 4E-A, Frankfort, Kentucky 40621

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans with Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation:

(a) The statutory authority for the amendment of this administrative regulation is SB 328 enacted during the 1998 Regular Session of the General Assembly.

(b) The cabinet intends to amend 906 KAR 1:110 to replace the licensure category of rural primary-care hospital with the licensure category of critical access hospital. Other amendments will comply with drafting requirements of KRS Chapter 13A.

(c) The necessity, function, and conformity of the proposed administrative regulation is as follows: To comply with the mandate of KRS 216B.042 and 216B.105 in the establishment of licensure requirements for the operation of critical access hospitals.

(d) The benefits expected from these proposed amendments are that they will improve access to health services for rural residents of Kentucky.

(e) The administrative regulation will be implemented as follows: By the Division of Licensing and Regulation in the Office of Inspector General, Cabinet for Health Services.

**Department for Medicaid Services**

July 15, 1998

(1) **907 KAR 1:002**, Definitions.

(2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 31, 1998 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Ken-

VOLUME 25, NUMBER 2 – AUGUST 1, 1998

tucky, 40621.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 31, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Administration and Development, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to definitions are KRS 194.050 and HB 132 of the 1998 GA.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend the definition of medical assistance drug list; add other definitions pertinent to the provision of medical assistance; incorporate HB 132 of the 1998 GA provisions, KRS Chapter 13A formatting and technical requirements and other minor clarifications.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation establishes definitions for words and phrases used by the department in regulations pertaining to the provision of medical assistance.

(d) The benefits expected from administrative regulation are: explanation of terms used by the Medicaid Program and the elimination of conflicting terminology between this administrative regulation and other topical regulations.

(e) The administrative regulation will be implemented as follows: By the Division of Administration and Development, Department for Medicaid Services, Cabinet for Health Services.

July 15, 1998

(1) **907 KAR 1:025**, Payments for nursing facility and intermediate care facility for the mentally retarded services.

(2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 31, 1998 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 31, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Administration and Development, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to payment for certified brain injury, a nursing facility with a distinct part ventilator unit, a nursing facility designated as a mental retardation specialty, a pediatric facility or an intermediate care facility for the mentally retarded are KRS 194.050, 205.520 and HB 132 of 1998 GA.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:025 to:

1. Incorporate:

- a. The \$504 million budget cap for state fiscal year 1998; and
- b. HB 321 which provides a Medicaid reimbursement budget cap nursing facilities for the state fiscal years 1999 and 2000, of \$519.1 million and \$534.6 million respectively and provides a methodology for monitoring and adjusting rates. This process also includes a revised methodology for monitoring and adjusting rates;

2. Revise ventilator payment provisions to comply with a Franklin County Circuit Court order;

3. Revise distinct part requirement, twenty (20) bed nursing facility unit, fifteen (15) bed census requirements for payments purposes for ventilator rate;

4. Revise the requirements for the Preadmission Screening and Resident Review (PASRR) Program; and

5. Establish an extenuating circumstance pool to provide on add-on to the calculated rate.

6. Ensure that there is no conflicting information between the regulation and the manual.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation recognizes



## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

the budget limit for state fiscal years 1998, 1999 and 2000 and sets forth the method for determining amounts payable by the cabinet to reimburse nursing facilities, nursing facilities with a certified brain injury unit, nursing facilities with a distinct part ventilator unit, nursing facilities designated as a mental retardation specialty, a pediatric facilities or intermediate care facilities for the mentally retarded.

(d) The benefits expected from administrative regulation are:

1. The enacted budget for nursing facilities will be met for state fiscal years FY 1998, 1999 and 2000;
  2. Compliance with KRS Chapters 13A and 13B;
  3. Expanded availability and access to medically necessary nursing facility services;
  4. Elimination of the requirement of annual resident reviews;
  5. Elimination of duplicative and conflicting policy between this administrative regulation and 907 KAR 1:755;
  6. The revision to the policy permitting reimbursement at a high intensity rate for individuals who require at least twelve (12) hour ventilator services and twenty-four (24) hour nursing services; or individuals who are under physician orders and management, and are in an active weaning program which requires twenty-four (24) hour high intensity nursing. The twelve (12) hour dependency requirements do not apply to active weaning.
  7. Medicaid eligibles will benefit by being provided access to and payments for additional facility sites offering ventilator services.
- (e) The administrative regulation will be implemented as follows: By the Division of Administration and Development, Department for Medicaid Services, Cabinet for Health Services.

July 15, 1998

- (1) **907 KAR 1:039**, Payments for hearing services.
- (2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 31, 1998 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to July 31, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of Counsel, 275 East Main Street, 4-West, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, FAX: (502) 564-7573.
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Administration and Development, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).
- (7) Information relating to the proposed administrative regulation.
  - (a) The statutory authority for the promulgation of an administrative regulation relating to 907 KAR 1:039 are KRS 205.520, 194.050, House Bills 132 and 321 of the 1998 GA.
  - (b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:039, Payments for hearing services, to revise payment for dispensing of two hearing aids the same day and to make minor policy clarifications.
  - (c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the provisions relating to payments for hearing services provided by audiologists and hearing aid dealers. This policy change is a result of HB 321 of the 1998 GA.
  - (d) The benefits expected from administrative regulation are: Increased access to hearing services for Kentucky Medicaid recipients and limiting the amount paid when two hearing aids are dispensed at the same time.
  - (e) The administrative regulation will be implemented as follows: By the Division of Administration and Development, Department for Medicaid Services, Cabinet for Health Services.

July 15, 1998

- (1) **907 KAR 1:043**, Repeal of 907 KAR 1:032, Hospital furnished nursing facility services and 907 KAR 1:047, Amounts payable for hospital furnished skilled nursing and intermediate care facility services.
- (2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 31, 1998 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 31, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of Counsel, 275 East Main Street, 4-West, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, FAX: (502) 564-7573.
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or

VOLUME 25, NUMBER 2 – AUGUST 1, 1998

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Administration and Development, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 907 KAR 1:043 are KRS 194.050, 205.520 and 216B.020.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will repeal 907 KAR 1:037, Hospital furnished nursing facility services, and 907 KAR 1:047, Amounts Payable for hospital furnished skilled nursing and intermediate care facility services. The nursing facility beds provided for in these administrative regulations were eliminated as a result of the passage of KRS 216B.020. The regulations will be replaced by 907 KAR 1:780. This replacement regulation establishes procedures and criteria for processing applications for Medicaid certification for those hospital-based nursing facility beds that were converted from dual-licensed acute care hospital beds pursuant to KRS 216B.020(4) and supplements applicable provisions for provider enrollment set forth in 907 KAR 1:672, Section 2 and the administrative hearings process set forth in 907 KAR 1:671, Section 1(1).

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation repeals 907 KAR 1:037 and 907 KAR 1:042. The nursing facility beds provided for in these administrative regulations were eliminated as a result of the passage of KRS 216B.020. These regulations will be replaced by 907 KAR 1:780. This replacement regulation establishes procedures and criteria for processing applications for Medicaid certification for those hospital-based nursing facility beds that were converted from dual-licensed acute care hospital beds pursuant to KRS 216B.020(4) and supplements applicable provisions for provider enrollment set forth in 907 KAR 1:672, Section 2 and the administrative hearings process set forth in 907 KAR 1:671, Section 1(1).

(d) The benefits expected from administrative regulation are: Repeals 907 KAR 1:032, Hospital furnished nursing facility services, and 907 KAR 1:047, Amounts payable for hospital furnished skilled nursing and intermediate care facility services, which were eliminated pursuant to KRS 216B.020. They will be replaced by 907 KAR 1:780 which sets forth the Medicaid participation criteria for dual-licensed acute-care hospital beds that were converted to nursing facility beds pursuant to KRS 216.020 and supplements applicable provisions for provider enrollment set forth in 907 KAR 1:672, Section 2 and the administrative hearings process set forth in 907 KAR 1:671, Section 1(1).

(e) The administrative regulation will be implemented as follows: By the Division of Administration and Development, Department for Medicaid Services, Cabinet for Health Services.

July 15, 1998

(1) **907 KAR 1:391**, Repeal of 907 KAR 1:390.

(2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 31, 1998 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and

2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 31, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of Counsel, 275 East Main Street, 4-West, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, FAX: (502) 564-7573.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or

2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Administration and Development, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to the repeal of 907 KAR 1:390 are KRS 13A.310, 205.520, 194.050, 42 USC 1396a, c and d.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will repeal 907 KAR 1:390, Incorporation by reference of the hearing services manual.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation repeals 907 KAR 1:390, Incorporation by reference of the hearing services manual.

(d) The benefits expected from administrative regulation are: To comply with KRS 13A.310 and to prevent conflicting and duplication of policy between 907 KAR 1:390 and 907 KAR 1:038.

(e) The administrative regulation will be implemented as follows: By the Division of Administration and Development, Department for Medicaid Services, Cabinet for Health Services.

July 15, 1998

(1) **907 KAR 1:470**, Durable medical equipment.

(2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 31,

VOLUME 25, NUMBER 2 – AUGUST 1, 1998

1998, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 31, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Administration and Development, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to durable medical equipment are KRS 194.050 and EO 96-862.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:470, to revise and clarify conditions of participation; covered services; revise, update and implement the durable medical equipment manual; to make drafting and formatting changes in order to comply with KRS Chapter 13A, and make minor clarifications to current policy.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the provision relating to the delivery of durable medical equipment, orthotics, prosthetics and supplies for which payment shall be made by the Medicaid program on behalf of both the categorically needy and medically needy.

(d) The benefits expected from administrative regulation are: Revise, clarify and update policy for coverage of durable medical equipment.

(e) The administrative regulation will be implemented as follows: By the Division of Administration and Development, Department for Medicaid Services, Cabinet for Health Services.

(1) **907 KAR 1:472**, Payments for durable medical equipment.

(2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 31, 1998, at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 31, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Administration and Development, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to payments for durable medical equipment are KRS 194.050 and EO 96.862

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will amend 907 KAR 1:472, to revise and clarify payment methodology, to make drafting and formatting changes in order to comply with KRS Chapter 13A, and make minor clarifications to current policy.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the method for determining amounts payable by the Department for Medicaid Services for durable medical equipment.

(d) The benefits expected from administrative regulation are: Revise and clarify policy related to payment.

(e) The administrative regulation will be implemented as follows: By the Division of Administration and Development, Department for Medicaid Services, Cabinet for Health Services.

July 15, 1998

(1) **907 KAR 1:475**, Repeal of 907 KAR 1:474, Incorporation by reference of the preventive health services manual.

(2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 31,

**VOLUME 25, NUMBER 2 – AUGUST 1, 1998**

1998, at 90 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 31, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Administration and Development, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to incorporation by reference of the durable medical equipment manual are KRS 194.050 and EO 96-862.

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will repeal 907 KAR 1:474, incorporation by reference of the durable medical equipment manual.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation acts to repeal 907 KAR 1:474.

(d) The benefits expected from administrative regulation are: To eliminate any conflict between obsolete and current material.

(e) The administrative regulation will be implemented as follows: By the Division of Administration and Development, Department for Medicaid Services, Cabinet for Health Services.

July 15, 1998

(1) **907 KAR 1:780**, Converted dual-licensed hospital-based nursing facility beds.

(2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.

(3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 31, 1998 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.

(4)(a) The public hearing will be held if:

1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.

(b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 31, 1998, the public hearing will be canceled.

(5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of Counsel, 275 East Main Street, 4-West, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, FAX: (502) 564-7573.

(b) On a request for public hearing, a person shall state:

1. "I agree to attend the public hearing."; or
2. "I will not attend the public hearing."

(6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.

(b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Administration and Development, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.

(c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).

(7) Information relating to the proposed administrative regulation.

(a) The statutory authority for the promulgation of an administrative regulation relating to 907 KAR 1:780 are KRS 194.050, 205.520 and 216B.020. It will establish procedures and criteria for processing applications for Medicaid certification for those hospital-based nursing facility beds that were converted from dual-licensed acute care hospital beds pursuant to KRS 216B.020(4).

(b) The administrative regulation that the Department for Medicaid Services intends to promulgate will replace 907 KAR 1:037 and 907 KAR 1:042 with 907 KAR 1:780.

(c) The necessity, function and conformity of the proposed administrative regulation is as follows: This administrative regulation sets forth the Medicaid participation criteria for dual-licensed acute-care hospital beds that were converted to nursing facility beds pursuant to KRS 216B.020.

(d) The benefits expected from administrative regulation are:

1. Establishes procedures and criteria for processing applications for Medicaid certification for those hospital-based nursing facility beds that were converted from dual-licensed acute care hospital beds pursuant to KRS 216B.020(4).

2. The process and criteria provided in this administrative regulation supplements applicable provisions for provider enrollment set forth in 907 KAR 1:672, Section 2, and the administrative hearings process set forth in 907 KAR 1:671, Section 1(1).

3. An increase of approximately 64,000 bed days for Medicaid recipients.

(e) The administrative regulation will be implemented as follows: By the Division of Administration and Development, Department for Medicaid Services, Cabinet for Health Services.

VOLUME 25, NUMBER 2 – AUGUST 1, 1998

July 15, 1998

- (1) **907 KAR 4:020**, Kentucky Children's Health Insurance Program.
- (2) Cabinet for Health Services, Department for Medicaid Services intends to promulgate an administrative regulation governing the subject matter listed above.
- (3) A public hearing to receive oral and written comments on the proposed administrative regulation has been scheduled for August 31, 1998 at 9 a.m., in the Department for Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky, 40621.
- (4)(a) The public hearing will be held if:
  1. It is requested, in writing, by at least 5 persons, or an administrative body, or an association having at least 5 members; and
  2. A minimum of 5 persons, or the administrative body or association, agree, in writing, to be present at the public hearing.
- (b) If a request for a public hearing, and agreement to attend the public hearing, are not received from the required number of people at least 10 days prior to August 31, 1998, the public hearing will be canceled.
- (5)(a) Persons wishing to request a public hearing should mail their written request to the following address: Mae Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of Counsel, 275 East Main Street, 4-West, Frankfort, Kentucky 40621, Telephone: (502) 564-7905, FAX: (502) 564-7573.
- (b) On a request for public hearing, a person shall state:
  1. "I agree to attend the public hearing."; or
  2. "I will not attend the public hearing."
- (6)(a) KRS Chapter 13A provides that persons who desire to be informed of the intent of an administrative body to promulgate an administrative regulation governing a specific subject matter may file a request to be informed by the administrative body.
- (b) Persons who wish to file this request may obtain a request form from the Administrative Regulation Coordinator, Department for Medicaid Services, Division of Administration and Development, CHR Building, 275 East Main Street, Frankfort, Kentucky 40621.
- (c) Note: Requests for Notification and the Notice of Intent to Promulgate shall be made available in another format, upon request, in accordance with the Americans With Disabilities Act. Persons requesting assistance regarding Cabinet for Health Services' regulations may call toll free 1-800-372-2973 (V/TDD).
- (7) Information relating to the proposed administrative regulation.
  - (a) The statutory authority for the promulgation of an administrative regulation relating to KCHIP is SB 128 of the 1998 GA and HB 132 of the 1998 GA.
  - (b) The administrative regulation that the Department for Medicaid Services intends to promulgate will establish the definitions, eligibility criteria, copayments for services, schedule of benefits, premium contributions, KCHIP entity requirements, grievance and appeal rights and procedures for the Kentucky Children's Health Insurance Program.
  - (c) The Department for Medicaid Services anticipates making a draft of this ordinary administrative regulation available for review at least 48 hours prior to the hearing on the internet at <http://www.cfc-chs.chr.state.ky.us/chs/kchip/kchip.htm>. It is also anticipated that a copy of the draft regulation will be available at the time and place of the public hearing.
  - (c) The necessity, function and conformity of the proposed administrative regulation is as follows: The ordinary administrative regulation sets forth eligibility criteria, schedule of benefits, premium contribution, level of copayments, and criteria for health services providers wishing to contract with the Commonwealth to provide KCHIP coverage.
  - (d) The benefits expected from administrative regulation are: The improved health status of children in Kentucky and continuity of care for previously uninsured children.
  - (e) The administrative regulation will be implemented as follows: By the Division of Administration and Development, Department for Medicaid Services.

EMERGENCY ADMINISTRATIVE REGULATIONS NOW IN EFFECT

(NOTE: Emergency administrative regulations expire 170 days from publication or upon replacement, repeal, or withdrawal)

STATEMENT OF EMERGENCY  
105 KAR 1:170E

This administrative regulation prohibits payment of a refund of member contributions prior to termination for members of the Kentucky Employees Retirement System, County Employees Retirement System or State Police Retirement System. 1998 Ky. Acts ch. 105, sec. 14, which becomes effective July 15, 1998, allows employees participating in KERS, CERS or SPRS to request a refund of contributions prior to separation from service. Federal law governing public pension plans prohibits paying pension benefits prior to a separation from service occurring before normal retirement age. Failure to prevent in-service distributions could result in devastating tax consequences to the 215,000 members of the retirement system and, ultimately, to the Commonwealth and the local government entities participating in the systems. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The Notice of Intent for 105 KAR 1:170 was filed with Regulations Compiler on July 15, 1998.

PAUL E. PATTON, Governor  
RANDY OVERSTREET, Chair

FINANCE AND ADMINISTRATION CABINET  
Kentucky Retirement Systems

105 KAR 1:170E. Membership form requirements.

RELATES TO: KRS 16.530, 61.525, 61.526, 61.540, 61.542, 61.545, 61.625, 78.540, 1998 Ky. Acts ch. 105, sec. 14 [~~16.505 to 16.652, 61.510 to 61.705, 78.510 to 78.852~~]

STATUTORY AUTHORITY: KRS 61.645(9)(f) [(e)], 26 CFR 1.401-1(b)(1)(i), 26 USC 401(a)

EFFECTIVE: July 14, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 16.530, 61.526 and 61.540 require a member of the Kentucky Employees Retirement System, County Employees Retirement System or State Police Retirement System to file information with the Board of Trustees as a condition of membership. KRS 61.542 requires a member to file a designation of beneficiary. KRS 61.625 establishes the conditions under which a member may apply for a refund. 26 USC 401(a) provides that a qualified pension plan cannot make distributions prior to normal retirement age if a separation from service has not occurred. This administrative regulation establishes the information required for membership and establishes that the member shall not receive a refund unless the member has terminated employment.

Section 1. An employee eligible for participation on the date his agency first participates shall complete a "Form 2010, [an] Election or Rejection of Participation" [Form, Form 2, dated July 1991], designating his desire to participate in or waive participation and benefits in the retirement system. The original form shall be kept on file in the retirement office.

Section 2. Within thirty (30) days of participation, an employee who is required to participate or who elects to participate shall complete a "Form 2001, Membership Information" [Form, Form 1, dated December 1989]. The membership form shall be kept on file in the retirement office.

Section 3. An [The] employee may also complete a "Form 2035, Beneficiary Designation" [Form, Form 35, dated December 1992] which shall be sent to the retirement office. [If a designation of beneficiary form is not completed, if no beneficiary is named or if an improper beneficiary is named, the member's estate shall be the beneficiary until the member files a different designation with the retirement system.]

Section 4. (1) If an [the] employee is simultaneously eligible to participate in more than one (1) of the Kentucky Retirement Systems, the employee may elect to participate in only one (1) system and waive participation in and any rights to benefits from the employment in the other system during the period of simultaneous employment.

(2) The employee shall notify the retirement system in writing of his intent to exercise this right under KRS 61.545(3). Upon receipt of the notification, the retirement system shall provide the employee with an estimate of the benefits that may be forfeited by the employee and the "Form 2026, Simultaneous Employment Choice of Systems" [Form, Form 26, dated February 1991], necessary for making an election.

(3) If the employee does not complete and return the form, the employee shall participate in both systems simultaneously and his service shall be prorated between the systems based on his ratio of his creditable compensation in each system to his total creditable compensation from all systems.

(4) If the employee submits the completed form, the employer that participates in the system in which the employee rejected participation shall be notified that it shall not report creditable compensation or contributions on the employee for the period of simultaneous employment. If contributions were reported prior to receipt of the form, the employer and employee contributions shall be refunded to the employer and employee and all service credit under that system shall be deleted from the employee's account for the period of simultaneous employment.

Section 5. Pursuant to KRS 61.625, an employee who is not vested for monthly benefits may request a refund of his account by completing and returning a "Form 4525, [an] Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection" [~~Form 25, dated December 1992~~]. The Kentucky Retirement Systems shall not issue a refund to a member unless the member has terminated employment with his employer.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Form 2010, Election or Rejection of Participation (Rev. 5/98)";

(b) "Form 2001, Membership Information (Rev. 5/98)";

(c) "Form 2035, Beneficiary Designation (Rev. 5/98)";

(d) "Form 2026, Simultaneous Employment Choice of Systems (Rev. 5/98)"; and

(e) "Form 4025, Application for Refund of Member Contributions and Direct Rollover/Direct Payment Selection (Rev. 3/97)".

(2) This material may be inspected, copied or [Section 6. The forms required by this administrative regulation are incorporated by reference and may be] obtained from the Kentucky Retirement Systems Office at Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.

RANDY OVERSTREET, Chair  
WILLIAM P. HANES, Attorney

APPROVED BY AGENCY: July 6, 1998

FILED WITH LRC: July 14, 1998 at 3 p.m.

REGULATORY IMPACT ANALYSIS

Agency Contact: Pamala S. Johnson

(1) Type and number of entities affected: Employees of KERS, CERS and SPRS.

(2) Direct and indirect costs or savings to those affected: This regulation will not increase costs.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: There are no additional paperwork requirements.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: There is no impact on the retirement system.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no change in paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: This regulation does not affect state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: All administrative expenses are paid from employer contributions. There is no cost associated with the regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: This regulation does not affect economic activities.

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky:

(7) Assessment of alternate methods; reasons why alternatives were rejected: 26 USC 401(a) prohibits pension payments prior to retirement or separation from service.

(8) Assessment of expected benefits: The tax-exempt status of the retirement system is dependent on compliance with federal law.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no impact on the public health or environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 1998 Ky. Acts ch 105, sec. 14, provides for that a member may receive a refund of his contributions if the member is laid off.

(a) Necessity of proposed regulation if in conflict: This regulation prevents payments of member refunds except where employment has been terminated as required by 26 USC 401(a).

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: KRS 61.645(9)(f) states that provisions of the retirement statutes that conflict with federal law or regulation shall not be available to the member.

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? Tiering was not applied because the federal requirement applies the same to all members of the system.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. 26 USC 401(a).

2. This administrative regulation requires that a member shall not be paid a refund of his contributions unless the member terminates his employment.

3. The federal statute requires that prior to normal retirement age there must be a separation from service before a qualified pension plan may make distributions to a member.

4. This administrative regulation requires a separation from service before a payment of contributions as required to comply with the requirements of a qualified plan under 26 USC 401(a). 1998 Ky. Acts ch. 105, sec. 14, provides that a retired member may apply for a refund after being in lay-off status for 90 days. Because this provision could result in the member receiving an in-service distribution in

direct conflict with the federal provisions, 105 KAR 1:170 is amended to prohibit distributions prior to termination of employment.

#### STATEMENT OF EMERGENCY 105 KAR 1:230E

This administrative regulation establishes the period that a retired member of the Kentucky Employees Retirement System, County Employees Retirement System or State Police Retirement System shall receive benefits before he may return to employment in the same retirement system from which he is receiving his benefit. 1998 Ky. Acts ch. 105, sec. 28, which becomes effective July 15, 1998, allows employees participating in KERS, CERS or SPRS to be reemployed within the same retirement system and continue to receive his benefit. Federal law governing public pension plans prohibits paying pension benefits prior to normal retirement age where there is not a clear separation from service. In order to retain tax-exempt status, the Kentucky Retirement Systems must impose restrictions on reemployment. Failure to prevent in-service distributions could result in devastating tax consequences to the 215,000 members of the retirement system and, ultimately, to the Commonwealth and the local government entities participating in the systems. This emergency administrative regulation will be replaced by an ordinary administrative regulation. The Notice of Intent for 105 KAR 1:230 was filed with Regulations Compiler on July 15, 1998.

PAUL E. PATTON, Governor  
RANDY OVERSTREET, Chair

#### FINANCE AND ADMINISTRATION CABINET Kentucky Retirement Systems

##### 105 KAR 1:230E. Reemployment after retirement.

RELATES TO: KRS 61.637, 26 CFR 1.401-1(b)(1)(i), 26 USC 401(a), 1998 Ky. Acts ch. 105, sec. 28, ch. 75

STATUTORY AUTHORITY: KRS 61.645(9)(f), 26 USC 401(a)

EFFECTIVE: July 14, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 61.645(9)(f): (1) requires the board to promulgate administrative regulations that: (a) implement the provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852; and (b) conform with federal statute or regulation; (2) authorizes the board to promulgate administrative regulations that conform with federal statute and regulation; and (3) provides that provisions of KRS 61.515 to 61.705, 16.510 to 16.652, and 78.520 to 78.852 that conflict with federal statute or regulation shall not be available to a member of the Kentucky Retirement Systems. 1998 Ky. Acts ch. 105, sec. 28 provides that beginning August 1, 1998, a retired member who is reemployed in a position covered by the same retirement system from which he retired shall be treated as a new member upon reemployment. 26 USC 401(a) provides that a qualified pension plan shall not pay benefits prior to normal retirement age if a separation from service has not occurred. [The statute provides that a member who retires and who is reemployed within the same retirement system from which he is drawing a benefit may have his retirement stopped and be required to participate.] This administrative regulation establishes [sets out] the: (1) procedures, conditions, and requirements for the employment of a retired member by an agency in the County Employees Retirement System, Kentucky Employees Retirement System, and State Police Retirement System; and (2) penalties for violation of the provisions of this administrative regulation, [who is reemployed.]

Section 1. "Regular full-time position" is defined by:

(1) KRS 16.505(21), for members of the State Police Retirement System;

(2) KRS 61.510(22), for members of the Kentucky Employees Retirement System; and

(3) KRS 78.510(22), for members of the County Employees Retirement System.

Section 2. (1) A [The] retired member or his employer shall notify



## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

the retirement system if he has accepted ~~[accepts any]~~ employment with an agency ~~that participates~~ ~~[participating]~~ in the ~~[same]~~ retirement system from which he retired.

(2) If the ~~retired~~ member is under a contract;

(a) He ~~[-the member]~~ shall submit a copy of his contract to the retirement system; and

(b) The retirement system shall determine if he ~~[the member]~~ is an independent contractor for purposes of retirement benefits. ~~[The member shall complete and return a Reemployment After Retirement, Form 60, dated August 1994.]~~

Section 3. If a member is receiving a retirement allowance, or has filed the forms required for a retirement allowance, and is employed within one (1) month of his initial retirement date in a position that is required to participate in the retirement system from which he retired, the:

(1) The member's retirement shall be voided;

(2) The member shall repay to the retirement system the retirement allowance he received;

(3) The member shall contribute to the member account established for him prior to his retirement; and

(4) The retirement allowance for which the member shall be eligible upon retirement shall be determined by total service and creditable.

Section 4. (1) A retired member of the Kentucky Employees Retirement System or the State Police Retirement System who after initial retirement is hired by an agency that participates in the Kentucky Employees Retirement System or the State Police Retirement System shall be considered to have been hired by the same employer.

(2) A retired member of the County Employees Retirement System who after initial retirement is hired by the agency from which he retired shall be considered to have been hired by the same employer.

Section 5. (1)(a) If a hazardous member who retired prior to age fifty-five (55), or a nonhazardous member who retired prior to age sixty-five (65), is reemployed within twelve (12) months of his initial retirement date by the same employer, he shall obtain from his previous and current employers a copy of the job description established by the employers for the position and a statement of the duties performed by the member for the position:

1. From which he retired; and

2. In which he has been reemployed.

(b) The job descriptions and statements of duties shall be filed with the retirement office.

(2) If the retirement system determines that the retired member has been employed in a position with the same principal duties as the position from which the member retired:

(a) The member's retirement allowance shall be suspended during the period that begins on the month in which the member is reemployed and ends twelve (12) months after the member's initial retirement date.

(b) The retired member shall repay to the retirement system the retirement allowances that he received after reemployment began.

(c) Upon termination, or subsequent to expiration of the twelve (12) month period from the date of his initial retirement:

1. The retired member's retirement allowance based on his initial retirement account shall no longer be suspended; and

2. He shall receive the amount to which he is entitled, including an increase pursuant to KRS 61.691.

(d) Except as provided by 1998 Ky. Acts ch. 75, if the position in which a retired member is employed after initial retirement is a regular full-time position, the retired member shall contribute to a second member account established for him in the retirement system. Service credit gained after his date of employment shall be credited to the second member account.

(e) Upon termination, the retired member shall be entitled to benefits payable from his second retirement account.

(2)(a) If the retirement system determines that the retired member has not been reemployed in a position with the same principal duties as the position from which he retired, the retired member shall continue to receive his retirement allowance.

(b) If the position is a regular full-time position, he shall contribute to a second member account in the retirement system.

Section 6. (1) The provisions of this section shall apply, if a retired member is employed:

(a) One (1) month after initial retirement in a different position; or

(b) Twelve (12) months after initial retirement and prior to normal retirement age.

(2) The retired member shall:

(a) Contribute to a second member account in the retirement system; and

(b) Continue to receive his retirement allowance.

(3) Service credit gained after employment shall be credited to the second retirement account.

(4) Upon termination, the retired member shall be entitled to benefits payable from his second retirement account.

[Section 2. If the member is age seventy (70) or will be age seventy (70) during the calendar year, the member may certify that his income will exceed the maximum allowed by the Social Security Administration for a retired person over age sixty-five (65) and that he wishes to have his retirement allowance stopped and become a contributing member. The member may elect to have his payments continue and not contribute to the retirement system.]

Section 3. If the member is under age seventy (70), he shall certify whether his anticipated earnings will exceed the maximum allowable by the Social Security Administration for a retired person.

Section 4. Upon receipt of the reemployed member's certification, the retirement system shall notify the employer to withhold or not withhold contributions on the member.

Section 5. The form required by the administrative regulation is incorporated by reference and may be obtained from Kentucky Retirement Systems, Perimeter Park West, 1260 Louisville Road, Frankfort, Kentucky between the hours of 8 a.m. and 4:30 p.m. Monday through Friday.]

RANDY OVERSTREET, Chair

WILLIAM P. HANES, Attorney

APPROVED BY AGENCY: July 6, 1998

FILED WITH LRC: July 14, 1998 at 3 p.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Pamala S. Johnson

(1) Type and number of entities affected: All retired members of KERS, CERS and SPRS, approximately 40,000.

(2) Direct and indirect costs or savings to those affected: This regulation imposes a loss of pension for a period of up to one year on a retired member who returns to work in the same position with the same employer from which he retired.

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the: Retirees are no longer required to annually document anticipated earnings from reemployment. The only retirees who will be required to file documents with the retirement system are those who return to work with the same employer within a year of their original retirement date.

1. First year following implementation:

2. Second and subsequent years:

(3) Effects on the promulgating administrative body: It is anticipated that monitoring compliance will be less than previously due removal of the Social Security maximum earnings limitation.

(a) Direct and indirect costs or savings:

1. First year:



2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: The retirement system will not have to send and process the annual form that reemployed retirees were previously required to submit and will only have to review documents of those retirees who return to work with their original employer in less than one year.

(4) Assessment of anticipated effect on state and local revenues: This regulation does not affect state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: All administrative expenses are paid from employer contributions.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on: This regulation does not affect economic activities.

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky:

(7) Assessment of alternate methods; reasons why alternatives were rejected: The imposition of a 12-month separation from employment in the same position with the same employer is based on research of Revenue Rulings issued by the Internal Revenue Service. In order to remain a qualified plan under federal laws and regulations, the retirement system shall not pay benefits where a separation from service has not occurred.

(8) Assessment of expected benefits: The Kentucky Retirement Systems desires to be in compliance with federal requirements in order to remain qualified tax-exempt plan.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no impact on the public health or environmental welfare.

(b) State whether a detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no statute or regulation in conflict.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? Tiering was applied. The loss of pension penalty was imposed only where the reemployment provision might violate federal provisions. No penalties were applied to members who clearly establish a separation from service and later accept other employment within the same retirement system. No penalties apply for retirees who return to work after attaining normal retirement age.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. 26 USC 401(a), 26 CFR 1.401-1(b)(1)(i)

2. This administrative regulation requires that a retired member shall not return to employment within one month and, prior to normal retirement age, in the same or similar position with the same employer from which he retired within one year. The retired member shall forfeit distributions from his pension for the remainder of the one-year period if he violates this requirement.

3. The federal mandate requires that, prior to normal retirement age, there be a separation from service before a qualified pension plan may make distributions to a member. Neither 26 USC 401(a) nor 26 CFR 401-1 establish a clear definition of "separation from service". Revenue Rulings, including Rev. Rul. 56-693 and Rev. Rul. 74-254, have established that a plan will not remain qualified if it makes distributions from the pension plan to employees who have not established a clear separation from service.

4. This administrative regulation attempts to establish the minimum separation from service necessary to comply with the requirements to be a qualified plan under 26 USC 401(a). 1998 Ky. Acts ch. 105, sec. 28, provides that a retired member may return to work in the same retirement system from which he is receiving benefits and continue to receive his pension. Because of the lack of a clear definition of what constitutes separation from service, this provision

could result in the member receiving an in-service distribution in direct conflict with the federal provisions. Based on the revenue rulings and advice of tax counsel, the retirement system has established a requirement that 12 months elapse after initial retirement before a retiree may accept employment by the same employer in the same or substantially the same position. A penalty consisting of loss of pension benefits during the 12-month period is imposed to discourage employees from retiring with the intent of returning to work in the same position.

#### STATEMENT OF EMERGENCY 200 KAR 6:060E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed administrative regulation should be enacted on an emergency basis in order to set forth minimum requirements for documentation to be submitted with a proposal for lease of new construction to the Commonwealth pursuant to KRS 56.803. HB 704, effective July 15, 1998, requires proposed new construction to be considered in state procurement of leased office space pursuant to KRS 56.803, if the proposal does not contain any provision for a lease-purchase or an option to purchase. In order to have in place minimum requirements necessary to consider proposed new construction, it is necessary to promulgate this administrative regulation on an emergency basis. This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor  
JOHN P. MCCARTY, Secretary

#### FINANCE AND ADMINISTRATION CABINET Office of the Secretary

##### 200 KAR 6:060E. Lease of new construction.

RELATES TO: KRS 56.463, 56.800, 56.803  
STATUTORY AUTHORITY: KRS 56.463(2), (8), HB 704  
EFFECTIVE: July 15, 1998

NECESSITY, FUNCTION, AND CONFORMITY: HB 704 requires proposed new construction to be considered in state procurement of leased office space pursuant to KRS 56.803 without going through the build-to-suit process, so long as the proposed new construction does not contain provision for a lease-purchase or an option to purchase by the state. This administrative regulation is necessary in order to set minimum requirement for documentation to be submitted with a proposal for lease of new construction.

Section 1. (1) In addition to the information requested in the advertisement made pursuant to KRS 56.803, proposals for new construction in response to invitations to lease office space shall include:

(a) Documentation of ownership of proposed property (i.e. copy of deed or option to purchase);

(b) Scaled plot of the site identifying the location of the proposed building and parking area(s);

(c) A vicinity map indicating the location of the site;

(d) Scaled or dimensioned floor plan showing the exterior layout of the proposed building, including walls, doors, windows, columns, and any other structural considerations which may affect design of the interior space; and

(e) Certification that the property is properly zoned.

(2) The items specified in subsection (1)(a), (b), and (c) of this section shall be submitted with the initial proposal.

(3) The items specified in subsection (1)(d) and (e) of this section shall be submitted no later than the date of the site inspection conducted pursuant to KRS 56.803(10).

Section 2. (1) Persons with an option to purchase property may submit a proposal to lease such property if a valid, executed option contract is submitted with the proposal.

(2) If a person submits a proposal to lease property under an option contract and is awarded a lease, the purchase of the pro-

**VOLUME 25, NUMBER 2 – AUGUST 1, 1998**

posed property shall be completed and proof in the form of a deed submitted along with the signed lease contract.

JOHN MCCARTY, Secretary

ANGELA C. ROBINSON, Attorney

APPROVED BY AGENCY: July 13, 1998

FILED WITH LRC: July 15, 1998 at 11 a.m.

**REGULATORY IMPACT ANALYSIS**

Contact Person: Jim Abbott, Director

(1) Type and number of entities affected: Prospective lessors offering property for lease to the Commonwealth; anticipate approximately 100 entities per year will be affected.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No direct or indirect costs or savings on the cost of living and employment in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No direct or indirect costs or savings on the cost of doing business in the geographical area in which the administrative regulation will be implemented are anticipated. No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation.

(c) Compliance, reporting and paperwork requirements of those affected, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Compliance, reporting and paperwork requirements will mirror current lease process. No significant increase or decrease in cost of process is anticipated.

2. Second and subsequent years: Same as for first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: No effect on state and local revenues is anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: None required.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation. However, no economic impact is expected.

(b) Kentucky: No public comments have yet been received and no public hearing has yet taken place regarding this proposed regulation. However, no economic impact is expected.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were assessed.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: No effects on public health and environmental welfare are expected in the geographical area in which the regulation will be implemented or in Kentucky.

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on the environment and public health would result if the regulation was not implemented.

(c) If detrimental effect would result, explain detrimental effect: Does not apply.

(9) Identify any statute, rule, administrative regulation or government policy which may be in conflict, overlapping, or duplication: To the best of the knowledge of the Office of the Secretary, there

are no statutes, rules, administrative regulations or government policies which are in conflict, overlap, or duplicate the proposed administrative regulation.

(a) Necessity of proposed regulation if in conflict: Does not apply.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Does not apply.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied. This regulation applies equally to all persons proposing property for lease by the state.

**STATEMENT OF EMERGENCY  
501 KAR 1:030E**

In order to continue to operate the Justice Cabinet in accordance with KRS Chapter 439, the cabinet needs to implement this emergency administrative regulation. An ordinary administrative regulation will not suffice as this administrative regulation shall be effective immediately. The Justice Cabinet has revised this administrative regulation to comply with the recently enacted Kentucky Acts Chapter 606, Sections 24, 47, and 77. I am requesting that this administrative regulation be declared an emergency so the Parole Board may comply with the recently enacted legislation which limits parole eligibility for a sexual offender, increases the length of time a violent offender shall serve before becoming eligible, incorporates prerelease probation and addresses payment of restitution. This emergency administrative regulation shall be replaced by the ordinary administrative regulation in accordance with KRS Chapter 13A. The Notice of Intent for the ordinary administrative regulation is being filed with the Regulations Compiler at the same time the emergency administrative regulation is being filed.

PAUL E. PATTON, Governor

E. DANIEL CHERRY, Secretary

**JUSTICE CABINET  
Kentucky Parole Board**

**501 KAR 1:030E. Determining parole eligibility.**

RELATES TO: KRS 439.340(3)

STATUTORY AUTHORITY: KRS 439.340(3)

EFFECTIVE: July, 14, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 439.340 requires the Kentucky Parole Board to promulgate administrative regulations with respect to eligibility of prisoners for parole. This administrative regulation establishes the criteria for determining parole eligibility.

Section 1. Definitions. As used in these administrative regulations, unless the content otherwise requires:

(1) "Board" means the Kentucky Parole Board.

(2) "Chair" means the chairman of the board.

(3) "Deferment" means a decision by the board that an inmate shall serve a specific number of months before further parole consideration.

(4) "Detainer" means a document issued or made by a legal authority, authorizing the keeper of a prison or jail to keep the person named in the document in custody.

(5) "Parole" means the release of an inmate with a signed parole certificate to:

(a) The community prior to the expiration of his sentence, subject to conditions imposed by the board and subject to its supervision;

(b) Answer the detainer.

(6) "Parole recommendation" means a decision of the board that an inmate may be released from incarceration prior to the expiration of his sentence if the inmate has an approved parole plan pursuant to KRS 439.340(2) and has signed his parole certificate.

(7) "Parole rescission" means a decision of the board to terminate or rescind an inmate's parole recommendation, before the inmate is actually released on parole.

(8) "Parole revocation" means the formal procedure by which the

# VOLUME 25, NUMBER 2 – AUGUST 1, 1998

board may terminate or revoke a parolee's release on parole.

(9) "Preliminary revocation hearing" means the initial hearing conducted by a hearing officer to determine whether probable cause exists to believe a parolee has violated the conditions of his parole.

(10) "Reconsideration" means a decision to review a previous board action.

(11) "Restitution" is defined in Kentucky Chapter 606, sec. 177.

(12) "Serve-out", "SOT", or "serve-out-time" means a decision of the board that an inmate shall serve until the completion of his sentence (SOT - serve-out time).

(13) [(+2)] "Youthful offender" is defined in KRS 635.020(2) to (8).

Section 2. Ineligibility. (1) On or after July 15, 1998, a sex offender's eligibility shall be governed by KRS 197.045 (4).

(2) On or after July 15, 1998, a person confined to a state penal institution or county jail as a result of the revocation of his conditional discharge by the court pursuant to Kentucky Acts Chapter 606, Sections 25 and 70 shall not be eligible for parole consideration.

Section 3. Parole Eligibility. (1) Initial parole review date.

(a) A person confined to a state penal institution or county jail who has been convicted of a felony offense committed after December 3, 1980, [the effective date of this administrative regulation] shall have his case reviewed by the board, unless otherwise prohibited by statute, in accordance with the following schedule:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year, up to but not including 2 years	4 months
2 years, up to and including 39 years	20% of sentence received
More than 39 years, up to and including life	8 years
Persistent felony offender I in conjunction with a Class A, B or C felony	10 years

For any crime committed on or after July 15, 1998, which is a capital offense, Class A felony, or Class B felony, where the elements of the offense or the judgment of the court demonstrate that the offense involved death or serious physical injury to the victim or Rape 1 or Sodomy 1:

<u>Sentences of a number of years</u>	<u>85% of sentence received</u>
<u>Sentences of life</u>	<u>20 years</u>

(b) For the crimes, committed on or after July 15, 1986, but prior to July 15, 1998, of murder, manslaughter I, rape I, sodomy I, assault I, kidnapping -where there is serious physical injury or death, arson I - where there is serious physical injury or death, criminal attempt, criminal solicitation, or criminal conspiracy to commit any of the previously listed capital offenses or a Class A or Class B felony which involves serious physical injury or death of the victim:

Sentences of a number of years	50% of the sentence received or 12 years, whichever is less
Sentences of life	12 years

~~(b) A person confined to a state penal institution or county jail who has been convicted of a felony offense committed on or after December 3, 1980, but prior to the effective date of this administrative regulation, shall have his case reviewed by the board in accordance with the following schedule:~~

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year, up to but not including 2 years	4 months

2 years, up to and including  
39 years  
More than 39 years, up to  
and including life

20% of sentence received  
8 years]

(c) A person confined to a state penal institution or county jail who has been convicted of a felony offense committed prior to December 3, 1980 shall have his case reviewed by the board in accordance with the following schedule:

Sentence Being Served	Time Service Required Before First Review (Minus Jail Credit)
1 year	4 months
More than 1 year and less than 18 months	5 months
18 months up to and including 2 years	6 months
More than 2 years and less than 2 1/2 years	7 months
2 1/2 years up to 3 years	8 months
3 years	10 months
More than 3 years, up to and including 9 years	1 year
More than 9 years, up to and including 15 years	2 years
More than 15 years, up to and including 21 years	4 years
More than 21 years, up to and including life	6 years

Parole eligibility on an individual serving multiple sentences, where one (1) or more of the crimes resulted in a conviction committed under paragraph (b) of this subsection or this paragraph and one (1) or more committed under paragraph (a) of this subsection, shall be calculated by applying the parole eligibility criteria in effect at the time the most recent crime was committed.

(d) After the initial review for parole, a subsequent review, during confinement, shall be at the discretion of the board; however, the maximum deferment given at one (1) time shall not exceed the statutory minimum parole eligibility for a life sentence. The board shall reserve the right to order a serve-out on a sentence.

(e)1. If a confined prisoner is sentenced for a felony committed prior to the date of his current incarceration and he has not been discharged since his original admission and, if this new conviction shall be served consecutively, the sentence received for the latter conviction shall be added to the sentence currently being served to determine his parole eligibility.

2. If a confined prisoner is a returned parole violator who receives an additional consecutive sentence, his parole eligibility shall be calculated on the length on the new sentence only, beginning from the date of his final sentencing.

3. If a confined prisoner receives an additional concurrent or consecutive sentence after he has been considered by the board, but not yet released if parole is recommended, the previous action of the board shall be automatically voided and the new parole eligibility shall be calculated from the date of original admission on the aggregate sentences.

(f) If an inmate commits a crime while confined in an institution or while on an escape and receives a concurrent or consecutive sentence for this crime, eligibility time towards parole consideration on the latter sentence shall not begin to accrue until he becomes eligible for parole on his original sentence. This shall include a life sentence.

(g) In determining parole eligibility for an inmate who receives a sentence for an escape, a sentence for a crime committed while in the institution or on a sentence for a crime committed while on an escape, the total parole eligibility shall be calculated by adding the following, regardless of whether the sentences are ordered to run concurrently or consecutively:

1. The amount of time to be served for parole eligibility on the original sentence;
2. The amount of time to be served for parole eligibility on the

additional sentence for the escape;

3. The amount of time to be served for parole eligibility on the time to be served for the crime committed while in the institution and escape; and

4. The amount of time to be served for parole eligibility on the time to be served for the crime committed while on escape.

(h) If a confined prisoner who has previously met the board is given a deferment, escapes during the period of the deferment, and returns from that escape without a new sentence for the escape, the time out on the escape shall be added to the original deferment date to arrive at the new adjusted date. If the prisoner later receives a sentence for the escape the previous deferment shall be automatically voided and the new parole eligibility date shall be calculated based on the new sentence beginning from the date of sentencing for the new sentence.

(i) If an inmate receives a serve-out or deferment on his original sentence prior to receiving an escape sentence or a sentence for a crime committed while on escape or confined in an institution, he shall automatically be brought before the board again when he becomes eligible for parole consideration on the additional sentence. His parole eligibility shall be calculated from the date of sentencing on the new sentence.

(j) If an inmate receives a parole recommendation but escapes prior to being released, the parole recommendation shall be rescinded by the board upon receipt of a signed affidavit attesting to the fact that the escape has occurred from the institutional parole officer of the institution where the inmate escaped. Upon return to a state institution, the inmate shall be placed before the board at its next regularly scheduled hearing at the institution where he is confined.

(k) If a person is shock probated, or on prerelease probation, and later returned as a shock probation violator, his new parole eligibility shall be calculated by adding the period of time the inmate is on shock probation or prerelease probation to his original parole eligibility date.

(l) If a person on shock probation or prerelease probation is returned to the institution with a new consecutive sentence acquired while on shock probation or prerelease probation, he shall be eligible for a parole hearing if he has reached parole eligibility on the aggregate of the two (2) sentences. The time served toward parole eligibility prior to discharge by shock probation or prerelease probation shall be included as part of the total period of time to be served for parole eligibility on the aggregate sentences. The time spent out on shock probation or prerelease probation shall not be included as part of the total period of time to be served for parole eligibility.

(2) An inmate who has committed an offense on or after the effective date of this administrative regulation shall not be eligible for parole consideration prior to his minimum eligibility date, as determined pursuant to subsection (1) of this section, unless he has:

(a) Successfully completed the First Incarceration Shock Treatment (FIST) Program implemented by CPP 21.2, V. Policy, B. Eligibility Criteria, incorporated by reference, in 501 KAR 6:020; and

(b) Not been convicted of an offense that resulted in serious physical injury.

(3) The parole hearing shall consist of an interview with the inmate by the board, or a panel. If the inmate is too ill to appear, the board may, at its discretion, appoint one (1) member to interview the inmate in the health care facility where he is confined and report back to the remaining members. A majority vote by a quorum shall be required before action is taken.

(4) If an inmate refuses to meet the board on his scheduled hearing date, a notarized statement to that effect shall be presented. A person refusing to meet the board may petition the board for reconsideration.

(5) An inmate who is psychologically unstable may be deferred in absentia until he is able to meet the board if the board receives documentation from a certified psychologist or psychiatrist.

(6) The board shall schedule the initial parole hearing as follows, unless otherwise prescribed by statute:

(a) For an institution that has hearings scheduled once per month, the inmate shall, if administratively possible, be seen during the month he is eligible for parole consideration.

(b) For an institution that has hearings scheduled bimonthly, the inmate shall, if administratively possible, be seen during the month eligible or one (1) month prior to the month he is eligible for parole

consideration.

(c) If it is not administratively possible to conduct the initial parole hearing during the month the inmate is eligible, the inmate shall be seen at the next available board hearing conducted at the institution where the inmate is housed.

Section 4. [3:] Board Criteria for Granting or Denying Parole. (1) Before granting or denying parole, the board shall apply any of the following factors to an inmate:

(a) Current offense - seriousness, violence involved, firearm used;

(b) Prior record;

(c) Institutional adjustment and conduct - disciplinary reports, loss of good time, work and program involvement;

(d) Attitude toward authority - before and during incarceration;

(e) History of alcohol or drug involvement;

(f) History of prior probation, shock probation or parole violations;

(g) Education and job skills;

(h) Employment history;

(i) Emotional stability;

(j) Mental capacities;

(k) Terminal illness;

(l) History of deviant behavior;

(m) Official and community attitudes toward accepting inmate back in the county of conviction;

(n) Victim impact statement and victim impact hearing;

(o) Review of parole plan - housing, employment, need for community treatment and follow-up resources;

(p) Other factors involved that relate to the inmate's needs and public safety.

(2) The board may rescind a parole recommendation anytime prior to the release of an inmate on parole.

(3) The board may reconsider a decision to deny parole if the chair requests the full board to reconsider a decision and the full board votes in writing, and the majority votes in favor of the reconsideration hearing.

(4) An inmate whose parole is revoked, rescinded or denied by deferment or serve-out may request an appellate review by the board. A request for the review shall be received by the board within twenty-one (21) days from the date the final disposition is made available to the inmate. If the request is not received within twenty-one (21) days, it shall be denied. The request shall be screened by a board member or his designee to decide if a review shall be conducted. A review shall be conducted for the following reasons:

(a) If there is significant new evidence that was not available at the time of the hearing. A request based on the availability of new evidence or information shall be accompanied by adequate documentation.

(b) If there is an allegation of misconduct by a board member that is substantiated by the record.

(c) If there is a significant procedural error by a board member. A request which requires further consideration shall be based on one (1) or more of the above reasons. A request based on an allegation of misconduct or significant procedural error shall clearly indicate the specific misconduct or procedural error. If the case is set for review, it shall be conducted from the record of the first hearing. The appearance of the inmate shall not be necessary. If a board member wishes to have additional testimony, an appearance hearing may be conducted. The board shall vote after reviewing the initial taped interview and the record. A decision to change the result of the hearing that is the subject of the appeal shall require the concurrence of four (4) board members. This decision shall be final.

Section 5. [4:] Youthful Offender. (1) A youthful offender shall be subject to the jurisdiction of the board as described in KRS 640.080.

(2) The Cabinet for Human Resources and the Department of Corrections shall provide the board with necessary records to conduct a hearing as described in KRS 640.100.

(3) A youthful offender shall be subject to the board's applicable administrative regulations.

(4) A youthful offender housed by the Cabinet for Human Resources shall have a hearing at a site agreed upon by that cabinet and the board.

(5) A youthful offender housed by the Department of Corrections shall have a hearing at a site determined by the board.

(6) An administrative law judge shall hold a preliminary revocation hearing at a facility out of sight and sound of adult inmates.

(7) A final revocation hearing for a youthful offender shall be held at a site agreed upon by the Cabinet for Human Resources and the board or the central office of the board.

(8) Special hearings for a youthful offender shall be held in central office.

Section 6. [5:] Conditions of Parole. (1) The parolee shall:

(a) Report to his parole officer immediately upon arrival at his destination and submit in writing once a month, or more if directed by the officer, a report on forms prescribed by the Division of Probation and Parole.

(b) Permit his parole officer to visit his home and place of employment at any time.

(c) Not indulge in the use of a nonprescribed controlled substance.

(d) Work regularly and support his legal dependents. If unemployed, he shall report this fact to his officer and make every attempt to obtain other employment.

(e) Not associate with a convicted felon except for a legitimate purpose, including family, residential, occupational or treatment.

(f) Not visit with an inmate of a penal institution without permission of his parole officer.

(g) Not leave the state, district, residence or place of employment without written permission of his parole officer.

(h) Not be permitted to purchase, own or have in his possession a firearm or other weapon.

(i) Not violate any law or city ordinance of this state, any other state or the United States.

(j) Not falsify any report to his parole officer.

(k) Not have the right to register for voting purposes and may not hold office; if he registers or reregisters prior to restoration of his civil rights, he shall be in violation of the law which carries a maximum penalty of five (5) years in prison.

(l) Comply with the conditions of supervision and administrative regulations prescribed by the Division of Probation and Parole and special instructions of his parole officer.

(m) Pay a supervision fee unless expressly waived by the board.

(n) Pay the balance of the restitution ordered pursuant to Kentucky Acts Chapter 606, Section 47.

(o) Pay the balance of the sum payable to the Crime Victims Compensation Fund pursuant to KRS 346.185.

(2) If additional supervision or conditions are deemed necessary in a case, the board may order a parolee to:

(a) Pay restitution;

(b) Be placed in the Intensive Supervision Program, administered by the Department of Corrections, pursuant to 501 KAR 6:020 and CPP 27-11-01;

(c) [(b)] Observe a curfew;

(d) [(e)] Not associate with, or contact a specific individual;

(e) [(f)] Not frequent a certain place or business;

(f) [(g)] Be tested periodically for drugs; or

(g) [(h)] Observe any condition the board has determined is necessary for the rehabilitation of the parolee.

LINDA F. FRANK, Chair

STEPHEN P. DURHAM, General Counsel

TAMELA BIGGS, Staff Attorney

JACK DAMRON, Staff Attorney

APPROVED BY AGENCY: July 13, 1998

FILED WITH LRC: July 14, 1998 at 2 p.m.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Barbara Jones, General Counsel

(1) Type and number of entities affected: 8,729 inmates and 14,211 parolees and probationers.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds budgeted for this 1998 - 2000 biennium.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

#### STATEMENT OF EMERGENCY 501 KAR 1:050E

In order to continue to operate the Justice Cabinet in accordance with KRS Chapter 439, the cabinet needs to implement this emergency administrative regulation. An ordinary administrative regulation will not suffice as this administrative regulation shall be effective immediately. The Justice Cabinet has revised this administrative regulation to comply with the recently enacted Kentucky Acts Chapter 606, Sections 25, 47, 48 and 70. I am requesting that this administrative regulation be declared an emergency so the Parole Board may comply with the recently enacted legislation which requires the board to withhold the issuance of a final discharge until restitution is paid in full or expiration of the conditional discharge. This emergency administrative regulation shall be replaced by the ordinary administrative regulation in accordance with KRS Chapter 13A. The Notice of Intent for the ordinary administrative regulation is being filed with the Regulations Compiler at the same time the emergency administrative regulation is being filed.

PAUL E. PATTON, Governor  
E. DANIEL CHERRY, Secretary

VOLUME 25, NUMBER 2 – AUGUST 1, 1998

JUSTICE CABINET  
Kentucky Parole Board

501 KAR 1:050E. Granting final discharge from parole.

RELATES TO: KRS 439.352, 439.356, 439.358  
STATUTORY AUTHORITY: KRS 439.330(1)(g), 439.354  
EFFECTIVE: July 14, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 439.330(1)(g) establishes the authority of the Parole Board to grant a final discharge from parole. [KRS 439.354 establishes the need to set a period of time which the parolee must successfully spend on parole before the granting of a final discharge from parole. This administrative regulation establishes a set time period for the issuance of a final discharge from parole as well as specific criteria for its issuance. The purpose of this administrative regulation is to continue to encourage lawful activity and compliance with the conditions of parole on the parolee's part and to provide successful integration back into society. All matters relating to the granting of a final discharge from parole shall be conducted in the following manner:]

Section 1. When an offender paroled prior to July 15, 1998, reaches the maximum expiration date of his sentence, a final discharge from parole shall be issued automatically by the board. [A parolee may request a final discharge from parole after the expiration of twenty-four (24) months clear conduct from the date of parole and receipt, by the board, of a full report from the parole officer of the parolee's activities while on parole or the maximum expiration date for all sentences excluding a life sentence. On a life sentence, the parolee may request a final discharge from parole upon the completion of a minimum of five (5) years on active or inactive parole supervision and receipt, by the board, of a full report from the parole officer of the parolee's activities while on parole, assuming clear conduct from the date of parole release.]

Section 2. For any offender paroled on or after July 15, 1998, he shall not automatically receive a final discharge upon reaching the maximum expiration of his sentence from parole if he owes restitution. When a parolee who has reached his maximum expiration date pays his restitution in full, the board shall then issue a final discharge. Verification of payment shall be obtained from the parole officer.

Section 3. A person subject to the provisions of Kentucky Acts ch. 606, sec. 25 and 70 shall not receive a final discharge until the board receives verification of the expiration of the conditional discharge period. [Upon receipt of evidence that a parolee has satisfied all preceding requirements, the chair may issue, or cause to be issued, a certificate of final discharge from parole on any sentence upon receipt of a written request from the parole officer and considered by the full board.]

Section 3. When a parolee reaches the maximum expiration date of his sentence, a final discharge from parole shall be issued automatically by the board.]

LINDA F. FRANK, Chair

TAMELA BIGGS, Staff Attorney,

APPROVED BY AGENCY: July 14, 1998

FILED WITH LRC: July 14, 1998 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Barbara Jones, General Counsel

(1) Type and number of entities affected: 8,729 inmates and 14,211 parolees and probationers.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, includ-

ing factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds budgeted for this 1998 - 2000 biennium.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

STATEMENT OF EMERGENCY

501 KAR 2:070E

In order to continue to operate the Department of Corrections in accordance with KRS Chapters 196 and 197, the department needs to implement this emergency administrative regulation. An ordinary administrative regulation will not suffice as this administrative regulation shall be effective immediately. The Department of Corrections has established this administrative regulation to comply with the recently enacted KRS 533.010. This administrative regulation identifies procedures for implementing work release privileges granted by KRS 533.010(14). I am requesting that this administrative regulation be declared an emergency so the Department of Corrections may immediately begin using the criteria for placement of inmates on work release. This emergency administrative regulation shall be replaced by the ordinary administrative regulation in accordance with KRS Chapter 13A. The Notice of Intent for the ordinary administrative regulation is being filed with the Regulations Compiler at the same time the emergency administrative regulation is being filed.

PAUL E. PATTON, Governor

DOUG SAPP, Commissioner



**JUSTICE CABINET**  
**Department of Corrections**

**501 KAR 2:070E. Work release.**

RELATES TO: KRS 533.010

STATUTORY AUTHORITY: KRS 196.035, 533.010(14)

EFFECTIVE: July 14, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 533.010(14) requires the Department of Corrections to promulgate an administrative regulation to identify procedures for implementing work release privileges granted by this statute.

Section 1. The jailer may deny work release privileges to a defendant for violating any duly promulgated or adopted rule of the jail governing inmate conduct.

Section 2. Upon denial of work release privileges, an incident report shall be completed stating the reasons for the suspension of these privileges and citing the disciplinary rule or regulation that has been violated.

Section 3. The jailer or his designee shall review the incident report within twenty-four (24) hours to determine if the violation is sufficient to justify suspending the work release privileges, pending further review by the court.

Section 4. The jailer shall file the incident report and supporting documentation with the court of jurisdiction within the time specified in KRS 533.010(13).

DOUG SAPP, Commissioner

STEPHEN P. DURHAM, General Counsel

APPROVED BY AGENCY: July 13, 1998

FILED WITH LRC: July 14, 1998 at 2 p.m.

**REGULATORY IMPACT ANALYSIS**

Contact Person: Tamela Biggs, General Counsel

(1) Type and number of entities affected: 2,948 employees of the correctional institutions, 8,729 inmates, 14,211 parolees and probationers, and all visitors to state correctional institutions.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds budgeted for this 1998 - 2000 biennium.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

**STATEMENT OF EMERGENCY**  
**501 KAR 6:020E**

In order to continue to operate the Department of Corrections in accordance with KRS Chapters 196 and 197, the department needs to implement this emergency administrative regulation. An ordinary administrative regulation will not suffice as this administrative regulation shall be effective immediately. The Department of Corrections has revised policies and procedures to comply with the recently enacted Kentucky Acts Chapter 606, Sections 24, 45, 47, 48, 75, 77, 86, 88, 89, 90, 93, 131, 133, 135, 136, 137 and 140 and the implementation requirements of the 1997 Violent Offender Incarceration and Truth-in-Sentencing Incentive Grant Program. I am requesting that this administrative regulation be declared an emergency so the Department of Corrections may provide interventions and progressive sanctions within the time frame necessary to receive federal funding, to implement the policies and procedures necessary to preclude the awarding of meritorious good time to violent or sexual offenders, to provide the criteria for registering sex offenders, and provide guidance and criteria for probation and parole officers involved in administering the new programs, including prerelease probation. This emergency administrative regulation shall be replaced by the ordinary administrative regulation in accordance with KRS Chapter 13A. The Notice of Intent for the ordinary administrative regulation is being filed with the Regulations Compiler at the same time the emergency administrative regulation is being filed.

PAUL E. PATTON, Governor

DOUG SAPP, Commissioner

**JUSTICE CABINET**  
**Kentucky Department of Corrections**

**501 KAR 6:020E. Corrections policies and procedures.**

RELATES TO: KRS Chapters 196, 197, 439

STATUTORY AUTHORITY: KRS 196.035, 197.020, 439.470, 439.590, 439.640

EFFECTIVE: July 14, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 196.035, 197.020, 439.470, 439.590, and 439.640 authorize the Justice Cabinet and Department of Corrections to promulgate administrative regulations necessary and suitable for the proper administration of the department or any division therein. These policies and procedures are incorporated by reference in order to comply with the accreditation standards of the American Correctional Association. This administrative regulation establishes the policies and procedures for the Department of Corrections.

Section 1. Incorporation by Reference. (1) The following material is incorporated by reference:



# VOLUME 25, NUMBER 2 – AUGUST 1, 1998

(a) "Department of Corrections Policies and Procedures, Volume I, July 13 [January-8], 1998":

1.1	Legal Assistance for Corrections Staff
1.2	News Media [(Amended 1/8/98)]
01-04-01	The operation of Contracted Adult Correctional Facilities
1.6	Extraordinary Occurrence Reports
1.9	Institutional Duty Officer
1.11	Population Counts and Reporting Procedures
1.12	Operation of Motor Vehicles by Department of Corrections Employees
2.1	Inmate Canteen (Amended 7/13/98)
2.2	Warden's Fund
2.10	Surplus Property
3.12	Institutional Staff Housing
4.2	Staff Training and Development
4.3	Firearms and Chemical Agents Training
4.7	Uniformed Employee Dress Code
6.1	Open Records Law (Amended 7/13/98)
7.2	Asbestos Abatement
8.1	Occupational Exposure to Bloodborne Pathogens
8.2	Fire Safety
9.4	Transportation of Inmates to Funerals or Bedside Visits
9.5	Execution (Amended 7/13/98)
9.6	Contraband
9.8	Search Policy
9.18	Informants
9.19	Found Lost or Abandoned Property
10.2	Special Management Inmates
10.3	Safekeepers
10.4	Special Needs Inmates
11.2	Nutritional Adequacy of the Diet for Inmates
11.3	Special Diet Procedures
11.4	Alternative Diet
13.1	Pharmacy Policy and Formulary
13.2	Health Maintenance Services (Amended 7/13/98)
13.3	Medical Alert System
13.4	Health Program Audits
13.5	Acquired Immune Deficiency Syndrome
13.6	Sex Offender Treatment Program
13.7	Involuntary Psychotropic Medication Policy
13.8	Substance Abuse Treatment Program (Amended 7/13/98)
13.9	Dental Services (Amended 7/13/98)
13.11	Sex Offender Registration (Added 7/13/98)
14.1	Investigation of Missing Inmate Property
14.2	Personal Hygiene Items
14.3	Marriage of Inmates
14.4	Legal Services Program
14.6	Inmate Grievance Procedures (Amended 7/13/98) [(Amended 1/8/98)]
15.1	Hair and Grooming Standards
15.2	Offenses and Penalties [(Amended 1/8/98)]
15.3	Meritorious Good Time (Amended 7/13/98)
15-05-01	Restoration of Forfeited Good Time
15.6	Adjustment Procedures and Programs [(Amended 1/8/98)]
15.7	Inmate Account Restriction
15.8	Unauthorized Substance Abuse Testing (Amended 7/13/98)
16.1	Inmate Visits (Amended 7/13/98)
16.2	Inmate Correspondence
16.3	Telephone Calls [(Amended 1/8/98)]
16.4	Inmate Packages
17.1	Inmate Personal Property [(Amended 1/8/98)]
17.2	Assessment Center Operations
17.3	Controlled Intake of Inmates

(b) "Department of Corrections Policies and Procedures, Volume II, July 13 [January-8], 1998":

18.1	Classification of the Inmate
18.5	Custody and Security Guidelines (Amended 7/13/98)
18.7	Transfers

18.9	Out-of-state Transfers
18-10-01	Parole Progress Reports
18.11	Kentucky Correctional Psychiatric Center Transfer Procedures
18.12	Referral Procedure for Inmates Adjudicated Guilty But Mentally Ill
18.13	Population Categories
18.15	Protective Custody
18.17	Interstate Agreement on Transfers
18.18	International Transfer of Inmates
19.1	Government Services Projects
19.2	Community Services Projects
19.3	Inmate Wage Program
20.1	Educational Programs and Educational Good Time
21.1	Staffing Pattern for the First Incarceration Shock Treatment Program (FIST)
21.2	Phase I: Program Selection Assessment Criteria [(Amended 1/8/98)]
21.3	Program Schedule - Phase II and Phase III
21.4	Platoon Size and Composition
21.5	Physical Conditions Program Component
21.6	Group and Individual Counseling
21.7	Drug and Alcohol Abuse Counseling and Treatment
21.8	Work Programs Component
21.9	Education and Life Management
21.10	Auxiliary Services
21.11	Offenses and Penalties
22.1	Privilege Trips
23.1	Religious Programs (Amended 7/13/98) [Religion]
25.1	Gratuities
25.2	Public Official Notification of Release of an Inmate
25.3	Prerelease Program
25.4	Inmate Furloughs
25.6	Community Center Program [(Amended 1/8/98)]
25.7	Expedient Release
25.8	Extended Furloughs
25.10	Administrative Release of Inmates
25.11	Victim Notification

(c) "Department of Corrections Policies and Procedures, Volume III, July 13 [January-8], 1998":

27-01-01	Probation and Parole Procedures
27-02-01	Duties of Probation and Parole Officers
27-03-01	Workload Formula Supervisor/Staff Ratio
27-05-01	Testimony, Court Demeanor and Availability of Legal Services
27-06-01	Availability of Supervision Services
27-06-02	Equal Access to Services
27-07-01	Cooperation with Law Enforcement Agencies
27-08-01	Use of Force
27-09-01	Kentucky Community Resources Directory
27-10-01	Pretrial Diversion (Added 7/13/98)
27-11-01	Intensive Supervision [(Amended 1/8/98)]
27-11-02	Prerelease Probation (Added 7/13/98)
27-12-01	Supervision: Case Classification
27-12-02	Risk Assessment
27-12-03	Initial Interview
27-12-04	Conditions of Regular Supervision/Request for Modification
27-12-05	Releasee's Report
27-12-06	Grievance Procedures for Offenders
27-12-07	Employment, Education/Vocational Referral
27-12-08	Supervision Plan
27-12-09	Casebook
27-12-10	Guidelines for Monitoring Supervision Fee
27-12-11	Guidelines for Monitoring Financial Obligations Ordered by the Releasing Authority (Amended 7/13/98)
27-12-12	Other Financial Obligations (Not Ordered by Releasing Authority)
27-12-13	Community Service Work
27-12-14	Client Travel Restrictions
27-13-01	Drug and Alcohol Testing of Offenders (Amended 7/13/98)

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

27-13-02 Alcohol Detection  
 27-14-01 Interstate Compact Transfers  
 27-14-02 Interstate Compact Out-of-state Probation and Parole Violation  
 27-15-01 Supervision Report; Violations, Unusual Incidents  
 27-15-02 Community Confinement Program Subject: Electronic Monitoring (Amended 7/13/98)  
 27-16-01 Search; Seizure; Chain of Custody; Disposal of Evidence  
 27-17-01 Absconder Procedures  
 27-18-01 Probation and Parole Issuance of Detainer/Warrant  
 27-19-01 Preliminary Revocation Hearing  
 27-20-01 Division of Probation and Parole Controlled Intake Program  
 27-20-02 Prisoner Intake Notification (Amended 7/13/98)  
 27-20-03 Prisoner Status Change  
 27-21-01 Apprehension and Transportation of Probation and Parole Violators (Amended 7/13/98)  
 27-22-01 Fugitive Unit - Apprehensions  
 27-22-02 Fugitive Unit - Transportation of Fugitives  
 27-23-01 In-state Transfer  
 27-24-01 Closing Supervision Report  
 27-24-02 Reinstatement of Clients to Active Supervision  
 27-25-01 Application for Final Discharge from Parole (Amended 7/13/98)  
 27-26-01 Assistance to Former Clients and Dischargees  
 27-27-01 Restoration of Civil Rights  
 27-28-01 Firearms/Explosives: Application for Relief from Disability  
 27-29-01 Parole Review Dates Modification  
 28-01-01 Probation and Parole Investigation Reports (Introduction, Definitions, Confidentiality, Timing, and General Comments)  
 28-01-02 Probation and Parole Investigation Reports (Administrative Responsibilities)  
 28-01-03 Presentence, Postsentence, Supplemental and Partial Investigations (Amended 7/13/98) [Probation and Parole Investigation Reports (Presentence/Postsentence Investigation Interview Procedure)]  
 28-01-04 Probation and Parole Investigation Reports (Presentence/Postsentence Verification, Composition, Case Material and Submission Schedules) (Deleted 7/13/98)  
 28-01-05 Probation and Parole Investigation Reports (Computation of Jail Custody Credit) (Deleted 7/13/98)  
 28-01-06 Probation and Parole Investigation Reports (Misdemeanor Presentence Investigation Reports for the Circuit and District Courts) (Deleted 7/13/98)  
 28-01-07 Probation and Parole Investigation Reports (Supplemental Postsentence Investigation Report, Case Material, and Submission Schedule) (Deleted 7/13/98)]  
 28-01-08 Probation Parole Investigation Reports (Partial Investigation Reports and Submission Schedule)  
 28-01-09 Release of Information of Factual Content on Presentence/Postsentence Investigation Reports  
 28-02-01 Expedient Release Program  
 28-03-01 Parole Plans/Halfway Houses/Extended Furlough/Sponsorship/Gradual Release  
 28-04-01 Furlough Verifications  
 28-05-01 Out-of-state Investigations

(2) This material may be inspected, copied, or obtained at the Office of General Counsel, Department of Corrections, State Office Building, Frankfort, Kentucky 40601, (502) 564-2024, facsimile (502) 564-6494, Monday through Friday, 8 a.m. to 4:30 p.m.

DOUG SAPP, Commissioner  
 TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: July 13, 1998  
 FILED WITH LRC: July 14, 1998 at 2 p.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Tamela Biggs

(1) Type and number of entities affected: 2,948 employees of the correctional institutions, 8,729 inmates, 14,211 parolees and probationers, and all visitors to state correctional institutions.

(2) Direct and indirect costs or savings on the:  
 (a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented: None  
 (b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: None  
 (c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:  
 1. First year following implementation: None  
 2. Second and subsequent years: None  
 (3) Effects on the promulgating administrative body:  
 (a) Direct and indirect costs or savings:  
 1. First year: None  
 2. Continuing costs or savings: None  
 3. Additional factors increasing or decreasing costs: None  
 (b) Reporting and paperwork requirements: Policy revisions.  
 (4) Assessment of anticipated effect on state and local revenues: None  
 (5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1998-2000 biennium.  
 (6) Economic impact, including effects of economic activities arising from administrative regulation, on:  
 (a) Geographical area in which administrative regulation will be implemented: None  
 (b) Kentucky: None  
 (7) Assessment of alternative methods; reasons why alternatives were rejected: None  
 (8) Assessment of expected benefits:  
 (a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None  
 (b) State whether a detrimental effect on environment and public health would result if not implemented: None  
 (c) If detrimental effect would result, explain detrimental effect: N/A  
 (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None  
 (a) Necessity of proposed administrative regulation if in conflict: N/A  
 (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A  
 (10) Any additional information or comments: None  
 (11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the 14th Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

### STATEMENT OF EMERGENCY 501 KAR 14:010E

In order to continue to operate the Department of Corrections in accordance with KRS 196 and 197, the Department needs to implement this emergency administrative regulation. An ordinary administrative regulation will not suffice as this administrative regulation shall be effective immediately. The Department of Corrections has revised this administrative regulation to comply with the recently enacted Kentucky Acts Chapter 606, Section 80. I am requesting that this administrative regulation be declared an emergency so the Department of Corrections may immediately begin registering the victim of a violent crime for notification of the escape or release from a psychiatric or forensic psychiatric facility of the involuntarily committed inmate. This emergency administrative regulation shall be replaced by the ordinary administrative regulation in accordance with KRS Chapter 13A. The Notice of Intent for the ordinary administrative regulation is being filed with the Regulations Compiler at the same time the emergency administrative regulation is being filed.

PAUL E. PATTON, Governor  
 DOUG SAPP, Commissioner

JUSTICE CABINET  
Kentucky Department of Corrections

501 KAR 14:010E. Psychiatric or Forensic Psychiatric Facility Victim Notification System.

RELATES TO: KRS Chapter 202A

STATUTORY AUTHORITY: KRS Chapter 202A

EFFECTIVE: July 14, 1998

NECESSITY, FUNCTION AND CONFORMITY: KRS 202A requires the Department of Corrections to promulgate administrative regulations governing the notification of a crime victim who requests notice of when an involuntarily committed person, who is charged with or convicted of a violent crime, is discharged or escapes from a psychiatric or forensic psychiatric facility.

Section 1. Definitions. (1) "Notification" means the telephonic communication to the individual regarding the release or escape of an involuntarily committed person.

(2) "Register" means the electronic communication by the individual recording a telephone number to be contacted when the involuntarily committed person is released or escapes.

Section 2. (1) The chief administrator of a psychiatric or forensic psychiatric facility shall make available the name, date of birth, date of commitment, the charge, date of release or escape of the involuntarily committed individual to the Department of Corrections.

(2) The Department of Corrections shall provide:

- (a) The ability to register for notification purposes; and
- (b) The notification for which the individual has registered.

Section 3. If the Department of Corrections provides the administrator with any instrument or equipment to provide victim notification, the instrument or equipment shall be secured. The instrument or equipment shall be used only for the purposes set out in this administrative regulation, unless express written permission is obtained from the Department of Corrections.

DOUG SAPP, Commissioner

TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: July 13, 1998

FILED WITH LRC: July 14, 1998 at 2 p.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs

(1) Type and number of entities affected: 5 state operated or state contracted psychiatric facilities.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1998 - 2000 biennium.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

STATEMENT OF EMERGENCY  
502 KAR 31:020E

This emergency administrative regulation establishes the proper steps to administer the Sex Offender Registration System pursuant to KRS Chapter 17.500. This administrative regulation establishes definitions, defines the processes, and establishes the forms necessary for the administration of the Sex Offender Registration System. Failure to implement this administrative regulation could cause the Commonwealth to lose ten (10) percent of the Federal Byrne formula grant funds allocated to the Commonwealth under Section 506 of the Omnibus Crime Control and Safe Street Acts of 1968, 42 USC Section 3765. In order to continue receiving the full grant award, the Commonwealth must demonstrate its good faith efforts to comply with the registration and notification requirements of the Wetterling Act and Megan's Law, 42 USC Sec. 14071, the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act. This emergency administrative regulation includes the changes made by the 1998 General Assembly to bring Kentucky in compliance with federal law. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The Notice of Intent of 502 KAR 31:020 was filed with the Regulations Compiler on July 14, 1998.

PAUL E. PATTON, Governor

E. DANIEL CHERRY, Secretary

JUSTICE CABINET  
Department of State Police

502 KAR 31:020E. Sex Offender Registration System.

RELATES TO: KRS [Chapter] 17.500

STATUTORY AUTHORITY: KRS 15A.160, 17.080, 17.500, 17.510

EFFECTIVE: July 14, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 15A.160 AND 17.080 provide that the Secretary of the Justice Cabinet may promulgate such administrative regulations as are necessary to properly administer the cabinet. KRS 17.510 requires the Justice Cabinet to develop and implement a Sex Offender Registration System. This administrative regulation establishes the definitions, defines the processes, and establishes the forms necessary for the administration of the Sex Offender Registration System.

Section 1. Definitions. (1) "Authorizing witness" means an official identified in KRS 17.510(3), (4), and (5)

(2) "Cabinet" means the Justice Cabinet.

(3) "Department" means the Department of State Police.

(4) "SORS" means the Sex Offender Registration System.

(5) "Sex offender information" means the specific information set forth in KRS 17.500(3) and shall include:

(a) The date of release from custody;

(b) Maximum date of sentence or supervision, whichever is longer;

(c) Date of registry expiration;

(d) Name of person competing the form, if registrant is assisted;

(e) Office phone number of the releasing entity;

(f) Signature of the registrant;

(g) Signature of the authorizing witness; and

(h) The date the form is signed.

Section 2. Sex Offender Duty to Register Notification Form. (1) A person as described in KRS 17.510 shall provide the information required by KRS 17.500(4), 17.510 and this administrative regulation on the Sex Offender Duty to Register Notification Form #JC-4.

(2) Completion of Sex Offender Duty to Register Notification Form #JC-4.

(a) Probation and parole shall complete the notification form #JC-4 for the sentencing court.

(b) A person defined in KRS 17.510 shall, in the presence of the sentencing judge, sign the notification form #JC-4 in the "defendant's signature" block, in ink.

(c) A copy of the completed form shall be provided to the offender.

Section 3. SORS Registration Form. A person described in KRS 17.510 shall provide the information required by KRS 17.500(3), 17.510 and this administrative regulation on the Sex Offender Register Entry Form #P:225.

(1) Completion of Sex Offender Register Entry Registration Form #P:225.

(a) The entry form #P:225 shall be completed either in the presence of or by the authorizing witness.

(b) In the presence of the authorizing witness, the offender shall read the entry form #P:225.

(c) The offender shall sign the entry form #P:225 in the "signature of offender" block of the form, in ink.

(d) The authorizing witness shall sign the form entry form #P:225 in the "authorizing witness" block of the entry form #P:225.

(e) The authorizing witness shall mail one (1) copy of the completed entry form #P:225 to the department on day the form is completed.

(2) A entry form #P:225 shall not be considered complete if:

(a) It does not contain the information required by KRS 17.500(3) and this administrative regulation; or

(b) It contains erroneous or false information; or

(c) An item on the entry form #P:225 cannot be read or understood; or

(d) The offender or authorizing witness fails to sign the appropriate block.

(3) If the department determines that a entry form #P:225 is incomplete pursuant to the provisions of this administrative regulation, the department shall notify the submitting authorizing witness, without entry into the SORS, of:

(a) The reason the entry form #P:225 was determined to be incomplete; and

(b) The action required to complete the entry form #P:225 prior to inclusion to the SORS.

(4) Upon notification of the corrected deficiencies as described above, the department shall enter the record into the SORS.

Section 4. Sex Offender Register Modification Form. A person as described in KRS 17.510 shall provide any change in the information required by KRS 17.500(3), 17.510 and this administrative regulation on the Sex Offender Register Modification Form #P:226.

(1) Completion of Sex Offender Register Modification Form #P:226.

(a) The modification form #P:226 shall be completed either in

the presence of or by the authorizing witness.

(b) In the presence of the authorizing witness, the offender shall read the modification form #P:226.

(c) The offender shall sign the modification form #P:226 in the "signature of offender" block of the form, in ink.

(d) The authorizing witness shall sign the form modification form #P:226 in the "authorizing witness" block of the modification form #P:226.

(e) The authorizing witness shall mail one (1) copy of the completed modification form #P:226 to the department on the day the form is completed.

(2) A modification form #P:226 shall not be considered complete if:

(a) It does not contain the information required by KRS 17.500(7) and this administrative regulation; or

(b) It contains erroneous or false information; or

(c) An item on the form cannot be read or understood; or

(d) The offender or authorizing witness fails to sign in the appropriate block.

(3) If the department determines that a modification form #P:226 is incomplete pursuant to the provisions of this administrative regulation, the department shall notify the submitting authorizing witness of:

(a) The reason the modification form #P:226 was determined to be incomplete; and

(b) The action required to properly complete the modification form #P:226 before that information may be included in the SORS.

(4) Upon notification of the corrected deficiencies, as described above, the department shall enter the corrected information into that offender's SORS record.

Section 5. Sex Offender Registry Information Verification Form. A person sentenced as described in KRS 17.510 shall verify the accuracy of the information contained in the SORS on the Sex Offender Registry Information Verification Form #SOR 1.

(1) Annually, the department shall mail, no later than fourteen (14) days prior to the anniversary date of each registrant, a verification form #SOR 1 to the last known address of the registrant.

(2) Completion of Sex Offender Registry Information Verification Form #SOR 1. A person defined in KRS 17.510 shall:

(a) Complete the verification form #SOR 1, and sign the verification form #SOR 1 in the "registrant signature" block, in ink; and

(b) Shall mail the completed verification form #SOR 1 to the department on the day the form is completed.

(3) A verification form #SOR 1 shall not be considered complete if:

(a) It does not contain the information required by KRS 17.500(3) and this administrative regulation; or

(b) It contains erroneous or false information; or

(c) An item on the form cannot be read or understood; or

(d) The registrant fails to sign in the appropriate block.

(4) If the department determines that a verification form #SOR 1 is incomplete pursuant to the provisions of this administrative regulation, the department shall return the form to the submitting registrant notifying the submitting registrant of:

(a) The reason the verification form #SOR 1 was returned; and

(b) The action required by the registrant to properly complete the verification form #SOR 1 prior to validation thereof.

Section 6. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) The Sex Offender Duty to Register Form #JC-4;

(b) The Sex Offender Register Entry Form #P:225;

(c) The Sex Offender Register Modification Form #P:226; and

(d) The Sex Offender Registry Information Verification Form #SOR 1

(2) This material may be inspected, copied, or obtained at the Department of State Police, Data Processing Section, 1250 Louisville Road, Frankfort Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

E. DANIEL CHERRY, Secretary

BARBARA W. JONES, General Counsel

APPROVED BY AGENCY: July 11, 1998

FILED WITH LRC: July 14, 1998 at 3 p.m.

# REGULATORY IMPACT ANALYSIS

Contact Person: Lieutenant Daniel L. Ball

(1) Type and number of entities affected: 235 probation and parole officers, 5 data processing staff of the Kentucky State Police and Department of Information Systems, the Administrative Office of the Courts, all circuit clerks, the judiciary and the existing 630 registrants that reside in the Sex Offender Registry as well as the undetermined number of sex offenders that will be registered in the future.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$75,000

2. Continuing costs or savings: \$35,000

3. Additional factors increasing or decreasing costs: Analysis, program development, and other technical tasks required by federal or state legislative mandates.

(b) Reporting and paperwork requirements: Design of the data capture form, mainframe computer file, and informational reports necessary to accommodate the statutory requirements; and the development of appropriate policies and procedures to facilitate the overall responsibilities of the Justice Cabinet.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation is the funds budgeted for this 1994 - 1996 biennium. Agency General Fund moneys for startup and continuation costs.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the regulation applies equally to all those individuals that will be listed in the Sex Offender Registry.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. The federal mandate for the filing of this amendment is found at 42 USC Section 14071 and by the Federal Register, 62 FR 39009, July 21, 1997. The United States Justice Department monitors compli-

ance with this statute and the guidelines promulgated to implement Megan's Law and the Jacob Wetterling Crimes Against Children and Sexually violent Offender Registration Act. States were mandated to be in compliance with the federal statute no later than September 1997 unless granted a waiver as a result of having demonstrated a good faith effort to comply with the statute. A two year waiver was granted the Commonwealth by the Justice Department in September of 1997. The 1998 General Assembly modified Kentucky's Sex Offender Registration Statute which brings the Commonwealth in compliance with the federal mandates.

2. State compliance standards. The state compliance standards are found in KRS 17.500 through KRS 17.540.

3. Minimum or uniform standards contained in the federal mandate. The proposed amendment contains no minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This regulation imposes no stricter requirements, or additional or different responsibilities or requirement, than those required by the federal mandate.

5. Justification for the imposition of the stricter requirements, or additional or different responsibilities or requirements. This amendment does not impose standards, responsibilities or requirements.

## STATEMENT OF EMERGENCY 735 KAR 2:010E

This emergency administrative regulation sets the definitions for 735 KAR Chapter 2 (Interpreter Referral Services Program). In order to implement this program by July 1, 1998, as mandated by KRS 163.510, House Bill 321 (1998) and the Commonwealth Budget Final Budget Memorandum, FB 1998-2000, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler at the same time as the emergency administrative regulation is filed.

PAUL PATTON, Governor  
COLE ZULAUF, Chair

## EDUCATION, ARTS AND HUMANITIES CABINET Kentucky Commission on the Deaf and Hard of Hearing

### 735 KAR 2:010E. Definitions.

RELATES TO: KRS 12.290, 163.510 (4)

STATUTORY AUTHORITY: KRS 163.510, House Bill 321 (1998), Commonwealth Budget Final Budget Memorandum, FB 1998-2000

EFFECTIVE: June 30, 1998

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to implement KRS 163.510(4) which authorizes the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) to oversee the provision of interpreting services and to provide such services if necessary. House Bill 321 (1998) and the Commonwealth Budget Final Budget Memorandum specifically authorizes the KCDHH to provide interpreter referral services to state agencies. This administrative regulation sets the definitions necessary to implement the interpreter referral services program for use by state agencies.

Section 1. (1) "American Sign Language" (ASL) means a language whose medium is visual rather than aural. Like any other language, ASL has its own unique vocabulary, idioms, grammar and syntax, which are different from English. The elements of this language (the individual signs) consist of the handshape, position, movement and the orientation of the hands to the body and each other. ASL also uses space, direction and speed of movements, and facial expression to convey meaning.

(2) "Assigned interpreter" means the interpreter who commits to provide interpreting services for a particular event. Once an inter-

preter accepts the assignment, verbally or otherwise, it is a binding agreement between the referral agency and the interpreter.

(3) "Assignment" means an event interpreted for the enhancement of communication between deaf and hearing individuals.

(4) "Certified interpreter/transliterater" means a sign language, oral, or cued speech interpreter/transliterater who was awarded certification by demonstrating an advanced level of expressive and receptive skills. Certified interpreters/transliteraters have a thorough knowledge of at least one (1) of the codes of ethics on interpreting.

(5) "Close visual range interpreting," means an interpreting technique used with deaf people with limited vision. Signing space may also be limited, according to the individual's particular needs for communication.

(6) "Contracted interpreter" means freelance interpreter.

(7) "Code of ethics" means principles of ethical behavior set by the national certifying organizations to protect and guide interpreters and transliteraters and hearing and deaf consumers.

(8) "Cued speech" means a method of communication for use with and by deaf and hard of hearing persons, in which eight (8) configurations and four (4) positions of one (1) (either) hand are used to supplement the visible manifestations of natural speech.

(9) "Deaf and hard of hearing" people are individuals who have hearing disorders such that they cannot hear and understand speech clearly through the ear alone, with or without hearing aids. This may include but is not limited to deaf, hard or hearing, deaf-blind, late deafened, recently deafened, oral deaf, etc.

(10) "Deaf interpreter" means a deaf or hard of hearing individual, who is able to assist in providing an accurate interpretation between standard sign language and variants of sign language (including home signs) by acting as an intermediary between a deaf or hard of hearing person and an interpreter/transliterater.

(11) "Emergency" means a situation of an urgent nature in which the consumer or client determine that the delay of the event for more than twenty-four (24) hours is likely to result in injury or loss.

(12) "Interpretation" means the process of transmitting spoken English into American Sign Language and/or gestural communication (voice-to-sign); and the process of transmitting American Sign Language or gestural communication into spoken English (sign-to-voice).

(13) "No show assignment" means when either the consumer (deaf) or the client (state agency) does not appear at the scheduled event.

(14) "Oral interpreting" means facilitating a mode of communication utilizing speech, speechreading and residual hearing as a primary means of communication and using situational and culturally appropriate gestures, without the use of sign language.

(15) "Preferred mode of communication" means the method of communication that the deaf or hard of hearing individual is most expressive and comfortable in using. This may be American Sign Language, a manual form of English, writing, speaking, or any other mode of communication.

(16) "Referral service" means a service that specializes in coordinating interpreting services and acts as an intermediary between the interpreter and the direct consumers of services.

(17) "Replacement interpreter" means in the event of a schedule conflict, illness or other unforeseen conflict, the interpreter sent in to replace the assigned interpreter for a specific event.

(18) "Staff interpreter" means an interpreter who works exclusively for and is considered an employee of a particular agency/organization.

(19) "State agency" means all agencies of: the executive branch, with the exception of state-supported universities; the legislative branch, including the Legislative Research Commission.

(20) "Tactile interpreting" means a communication technique used by and with deaf-blind and deaf people with limited vision. The interpreter signs in a normal fashion and a deaf-blind person puts their hand (or hands) on top of the signer's hand (or hands) to feel the shape, movement and location of the signs.

(21) "Team interpreting" means the utilization of two (2) or more interpreters functioning as equal members of a team, rotating responsibilities at prearranged intervals, and providing support and feedback to each other.

(22) "Transliteration" means the process of transmitting spoken English into any one (1) of the several English-related or English

oriented varieties of sign language (voice-to-sign); and the process of transmitting English-related or English-oriented varieties of sign language into spoken English (sign-to-voice).

(23) "Traditional interpreting services" means the interpreter appears at the event in person and provides interpreting services on site.

(24) "Nontraditional interpreting services" means the utilization of videoconferencing technology to "bring" the interpreter to the event, without needing the interpreter to travel to the site of the event.

D. COLE ZULAUF, Chair

DIANE FLEMING, Attorney at Law

Contact person: Bobbie Beth Scoggins, Ed.D., Executive Director, Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky 40601, (502) 573-2604 V/T, (502) 573-3594 Fax.

## REGULATORY IMPACT ANALYSIS

Contact Person: Bobbie Beth Scoggins, Ed.D.

(1) Type and number of entities affected: These services are provided to entities that are commonly known as state agencies which include the following: all agencies of the executive branch with the exception of state-supported universities; the legislative branch, including the Legislative Research Commission.

(2) Direct and indirect cost or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented and to the extent available from the public comments received: No impact on the cost of living. Employment opportunities will be increased because the KCDHH will make interpreter/transliterater services readily available to state agencies thereby increasing employment opportunities for interpreters and transliteraters.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No change.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No additional costs for any state agency and insignificant effect on competition because the KCDHH Interpreter Referral Services will serve only state agencies. The impact on state agencies will be lower costs and more streamlined operations, because the task of locating an available interpreter will be provided by the KCDHH Interpreter Referral Service and won't require hours of agency staff time calling to locate available interpreters.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs increase in the first year because the office and personnel need to be set up in order to begin providing KCDHH Interpreter Referral Services.

2. Continuing costs or savings: After the first year, the recurring costs will be primarily personnel (two proposed at this time) and operating costs.

3. Additional Factors increasing or decreasing costs: None, other than cost of living increases in personnel and operating expenses.

(b) Reporting and paperwork requirements: Standard paperwork as required under KRS Chapter 45A and to appropriately document requests for interpreting services. The KCDHH has considerable on-line resources which eliminates duplication of paperwork and enhances staff productivity.

(4) Assessment of the anticipated effect on state and local revenue: None

(5) Source of Revenue to be used for implementation and enforcement of the administrative regulation: General Funds Appropriation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographic area in which administrative regulation will be implemented: Increase in employment opportunities for interpreters



and transliterators.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods: Reasons why alternative methods were rejected: The only other alternative to providing interpreting services is to have each state agency utilize its own personnel to spend extensive time and resources in locating and securing the services of a qualified interpreter or transliterator. This is not a cost effective alternative; thus, the establishment of KCDHH Interpreter Referral Services.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare on the geographical area in which implemented and on Kentucky: None.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(10) Any additional information or comments: This regulation simply sets forth the definitions for the implementation of a new Interpreter Referral Services Program.

(11) TIERING: Is tiering applied? No. Tiering was not appropriate because the program is a voluntary program for state agencies to receive assistance in obtaining interpreters for deaf or hard of hearing citizens accessing state services or deaf or hard of hearing state employees. No mandates are imposed on state agencies. The administrative regulation applies equally to all state agencies.

#### STATEMENT OF EMERGENCY 735 KAR 2:020E

This emergency administrative regulation establishes parameters of the Interpreter Referral Services Program. In order to implement this program by July 1, 1998, as mandated by KRS 163.510, House Bill 321 (1998) and the Commonwealth Budget Final Budget Memorandum, FB 1998-2000, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler at the same time as the emergency administrative regulation is filed.

PAUL PATTON, Governor  
COLE ZULAUF, Chair

#### EDUCATION, ARTS AND HUMANITIES CABINET Kentucky Commission on the Deaf and Hard of Hearing

735 KAR 2:020E. KCDHH Interpreter Referral Services Program parameters.

RELATES TO: KRS 12.290, 163.510 (4)

STATUTORY AUTHORITY: KRS 163.510, House Bill 321 (1998), Commonwealth Budget Final Budget Memorandum, FB 1998-2000

EFFECTIVE: June 30, 1998

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to implement KRS 163.510(4) which authorizes the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) to oversee the provision of interpreting services and to provide such services if necessary. House Bill 321 (1998) and the Commonwealth Budget Final Budget Memorandum specifically authorizes the KCDHH to provide interpreter referral services to state agencies. This administrative regulation establishes the Interpreter Referral Services Program parameters and criteria for receiving and providing these services.

Section 1. (1) The KCDHH Interpreter Referral Services are offered to assist state agencies in meeting their legal and ethical obligations under KRS 12.290; PL 93-112 (the Rehabilitation Act); and PL 101-336 (commonly known as the Americans with Disabilities Act) when such services are:

(a) Requested by an individual who is deaf or hard of hearing in order to receive public services; or

(b) Requested by a state agency employee who is deaf or hard of hearing; or

(c) Required under the provisions of PL 101-336 (the Americans with Disabilities Act), the PL 93-112 (the Rehabilitation Act) and its subsequent amendments, and KRS 12.290; or

(d) Required to provide accessibility at public events as defined by PL 101-336 or 93-112.

(2) Participation in the KCDHH Interpreter Referral Services program is voluntary.

(3) The services of a qualified interpreter/transliterator shall be provided at no cost to the deaf or hard of hearing consumer.

(4) The KCDHH shall comply with KRS Chapter 45A in employing staff and contract interpreters with the KCDHH Interpreter Referral Services Program.

(5) Where it is known and feasible, the KCDHH Interpreter Referral Service shall honor the preferred communication mode of the deaf or hard of hearing consumer.

(6) The KCDHH may assign two (2) or more interpreters as appropriate for assignments that are longer than one (1) hour, in accordance with the standard practices of "team interpreting".

(a) The standard practices of "team interpreting" document is incorporated by reference.

(b) This standard practices of "team interpreting" document can be obtained from the National Registry of Interpreters for the Deaf, 8630 Fenton Avenue, Suite 324, Silver Spring, Maryland 20910-3919. The phone number is: (301) 608-0050 V/TTY. The fax number is: (301) 608-0508.

(7) The KCDHH will assign deaf interpreters in accordance with standard practices in the interpreting profession.

(a) The standard practices of "use of a certified deaf interpreter" document is incorporated by reference.

(b) This standard practices of "use of a certified deaf interpreter" document can be obtained from the National Registry of Interpreters for the Deaf, 8630 Fenton Avenue, Suite 324, Silver Spring, Maryland 20910-3919. The phone number is: (301) 608-0050 V/TTY. The fax number is: (301) 608-0508.

(8) Nationally certified interpreters shall be preferred in working for the KCDHH Interpreter Referral Services.

(9) Interpreter fees to state agencies will be negotiated between the state agency and the interpreter on an individual basis. The KCDHH Interpreter Referral Service will provide the referral, but does not dictate hourly fees nor administer billing for services.

(10) The judicial branch of the Kentucky state government, including the Administrative Office of the Courts, may be exempt from complying with KRS Chapters 18A and 45A. Therefore, the procurement practices listed here would not apply to the judicial branch.

(11) The KCDHH will respond to all requests for interpreter services; however, as KCDHH recognizes that the demand for interpreting services exceeds the supply, KCDHH does not guarantee that all requests will be filled.

(a) Requests for interpreter services will be filled on a first-come, first-serve basis.

(b) The exception will be requests for interpreters received on an emergency basis.

(12) If the KCDHH is not able to fulfill a request by 12 noon, two (2) working days prior to the date of the unfulfilled assignment, the Interpreter Referral Services staff will contact the agency requesting the services and offer the following options:

(a) The KCDHH Interpreter Referral Services staff continue to seek an interpreter to fulfill the assignment, with the understanding that it is unlikely to be filled; or

(b) The KCDHH Interpreter Referral Services staff will cease seeking an interpreter and the agency may utilize their own contacts to locate a qualified interpreter; or

(c) The requesting agency can reschedule the assignment and the KCDHH Interpreter Referral Services staff will seek a qualified interpreter to fulfill the rescheduled assignment.

D. COLE ZULAUF, Chair  
DIANE FLEMING, Attorney at Law

Contact person: Bobbie Beth Scoggins, Ed.D., Executive Director, Kentucky Commission on the Deaf and Hard of Hearing, 632



Versailles Road, Frankfort, Kentucky 40601, (502) 573-2604 V/T,  
(502) 573-3594 Fax.

# REGULATORY IMPACT ANALYSIS

Contact Person: Bobbie Beth Scoggins, Ed.D.

(1) Type and number of entities affected: These services are provided to entities that are commonly known as state agencies which include the following: all agencies of the executive branch with the exception of state-supported universities; the legislative branch, including the Legislative Research Commission.

(2) Direct and indirect cost or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented and to the extent available from the public comments received: No impact on the cost of living. Employment opportunities will be increased because the KCDHH will make interpreter/transliterator services readily available to state agencies thereby increasing employment opportunities for interpreters and transliterators.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No change

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No additional costs for any state agency and insignificant effect on competition because the KCDHH Interpreter Referral Services will serve only state agencies. The impact on state agencies will be lower costs and more streamlined operations, because the task of locating an available interpreter will be provided by the KCDHH Interpreter Referral Services and won't require hours of agency staff time calling to locate available interpreters. No additional paperwork requirements to outside agencies.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs increase in the first year because the office and personnel need to be set up in order to begin providing KCDHH Interpreter Referral Services.

2. Continuing costs or savings: After the first year, the recurring costs will be primarily personnel (three) and operating costs.

3. Additional factors increasing or decreasing costs: None, other than cost of living increases in personnel and operating expenses.

(b) Reporting and paperwork requirements: Standard paperwork as required under KRS Chapter 45A and to appropriately document requests for interpreting services. The KCDHH has considerable on-line resources which eliminates duplication of paperwork and enhances staff productivity.

(4) Assessment of the anticipated effect on state and local revenue: None

(5) Source of Revenue to be used for implementation and enforcement of the administrative regulation: General Funds Appropriation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographic area in which administrative regulation will be implemented: Increase in employment opportunities for interpreters and transliterators.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods: Reasons why alternatives were rejected: The only other alternative to providing interpreting services is to have each state agency utilize its own personnel to spend extensive time and resources in locating and securing the services of a qualified interpreter or transliterator. This is not a cost effective alternative; thus, the establishment of KCDHH Interpreter Referral Services.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare on the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(10) Any additional information or comments: The KCDHH Interpreter Referral Service will remove the administrative burden of obtaining the services of an interpreter for a deaf/hard of hearing consumer from the government agency. Maintaining interpreting services in a central operation will streamline efforts, in keeping with the "Empower Kentucky" philosophy of making Kentucky government procedures more responsive to its constituents. The service will also eliminate duplication of state agencies' personnel efforts to locate interpreters.

(11) TIERING: Is tiering applied? No. Tiering was not appropriate because the program is a voluntary program for state agencies to receive assistance in obtaining interpreters for deaf or hard of hearing citizens accessing state services or deaf or hard of hearing state employees. No mandates are imposed on state agencies. The administrative regulation applies equally to all state agencies.

## STATEMENT OF EMERGENCY 735 KAR 2:030E

This emergency administrative regulation establishes interpreter qualifications for the Interpreter Referral Services Program. In order to implement this program by July 1, 1998 as mandated by KRS 163.510, House Bill 321 (1998) and the Commonwealth Budget Final Budget Memorandum, FB 1998-2000, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler at the same time as the emergency administrative regulation is filed.

PAUL PATTON, Governor  
COLE ZULAUF, Chair

## EDUCATION, ARTS AND HUMANITIES CABINET Kentucky Commission on the Deaf and Hard of Hearing

### 735 KAR 2:030E. Interpreter qualifications.

RELATES TO: KRS 12.290, 163.510 (4)

STATUTORY AUTHORITY: KRS 163.510, House Bill 321 (1998), Commonwealth Budget Final Budget Memorandum, FB 1998-2000

EFFECTIVE: June 30, 1998

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to implement KRS 163.510(4) which authorizes the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) to oversee the provision of interpreting services and to provide such services if necessary. House Bill 321 (1998) and the Commonwealth Budget Final Budget Memorandum specifically authorizes the KCDHH to provide interpreter referral services to state agencies. This administrative regulation sets qualifications of the interpreters utilized by the Interpreter Referral Services program.

Section 1. (1) Preferably, sign language and oral interpreters, both staff and freelance, shall possess at least one (1) nationally recognized interpreter certification from the:

(a) National Association of the Deaf (NAD); or

1. The certification standards of the National Association of the Deaf are incorporated by reference.

2. These standards may be inspected or obtained by contacting the National Association of the Deaf, 814 Thayer Avenue, Silver Spring, Maryland 20910. The phone number is: (301) 587-1788 V or (301) 587-1789 TTY. The fax number is: (301) 587-1791.

(b) National Registry of Interpreters for the Deaf (RID).

1. The certification standards of the national Registry of Interpreters for the Deaf are incorporated by reference.

2. These standards may be inspected or obtained by contacting the national Registry of Interpreters for the Deaf, 8630 Fenton Avenue, Suite 324, Silver Spring, Maryland 20910-3919. The phone number is: (301) 608-0050 V/TTY. The fax number is: (301) 608-0508.

(2) Preferably, cued speech transliterators shall possess a national certification from the national Training Evaluation and Certification Unit (TECUnit).

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

(a) The certification standards of the national TECUnit are incorporated by reference.

(b) These standards may be inspected or obtained by contacting the Cued Speech Transliterator National Training, Evaluation and Certification Unit (TECUnit) at 1112 Spotswood Drive, Silver Spring, Maryland 20905. The phone number is: (301) 236-4863 V/TTY.

D. COLE ZULAUF, Chair

DIANE FLEMING, Attorney at Law

Contact person: Bobbie Beth Scoggins, Ed.D., Executive Director, Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky 40601, (502) 573-2604 V/T, (502) 573-3594 Fax.

### REGULATORY IMPACT ANALYSIS

Contact Person: Bobbie Beth Scoggins, Ed.D.

(1) Type and number of entities affected: These services are provided to entities that are commonly known as state agencies which include the following: all agencies of the executive branch with the exception of state-supported universities; the legislative branch, including the Legislative Research Commission.

(2) Direct and indirect cost or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented and to the extent available from the public comments received: No impact on the cost of living. Employment opportunities will be increased because the KCDHH will make interpreter/transliterator services readily available to state agencies thereby increasing employment opportunities for interpreters and transliterators.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No change.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No additional costs for any state agency and insignificant effect on competition because the KCDHH Interpreter Referral Services will serve only state agencies. The impact on state agencies will be lower costs and more streamlined operations, because the task of locating an available interpreter will be provided by the KCDHH Interpreter Referral Services and won't require hours of agency staff time calling to locate available interpreters. No additional paperwork requirements to outside agencies.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs increase in the first year because the office and personnel need to be set up in order to begin providing KCDHH Interpreter Referral Services.

2. Continuing costs or savings: After the first year, the recurring costs will be primarily personnel (three) and operating costs.

3. Additional factors increasing or decreasing costs: None, other than cost of living increases in personnel and operating expenses.

(b) Reporting and paperwork requirements: Standard paperwork as required under KRS Chapter 45A and to appropriately document requests for interpreting services. The KCDHH has considerable on-line resources which eliminates duplication of paperwork and enhances staff productivity.

(4) Assessment of the anticipated effect on state and local revenue: None

(5) Source of revenue to be used for implementation and enforcement of the administrative regulation: General Funds Appropriation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographic area in which administrative regulation will be implemented: Increase in employment opportunities for interpreters and transliterators.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods: Reasons why alternatives were rejected: The only other alternative to providing interpreting services is to have each state agency utilize its own personnel to spend extensive time and resources in locating and securing the

services of a qualified interpreter or transliterator. This is not a cost effective alternative; thus, the establishment of KCDHH Interpreter Referral Services.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare on the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(10) Any additional information or comments: The KCDHH Interpreter Referral Service will remove the administrative burden of obtaining the services of an interpreter for a deaf/hard of hearing consumer from the government agency. Maintaining interpreting services in a central operation will streamline efforts, in keeping with the "Empower Kentucky" philosophy of making Kentucky government procedures more responsive to its constituents. The service will also eliminate duplication of state agencies' personnel efforts to locate interpreters.

(11) TIERING: Is tiering applied? No. Tiering was not appropriate because the program is a voluntary program for state agencies to receive assistance in obtaining interpreters for deaf or hard of hearing citizens accessing state services or deaf or hard of hearing state employees. No mandates are imposed on state agencies. The administrative regulation applies equally to all state agencies.

### STATEMENT OF EMERGENCY 735 KAR 2:040E

This emergency administrative regulation establishes the interpreter protocols for the Interpreter Referral Services Program. In order to implement this program by July 1, 1998, as mandated by KRS 163.510, House Bill 321 (1998) and the Commonwealth Budget Final Budget Memorandum, FB 1998-2000, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler at the same time as the emergency administrative regulation is filed.

PAUL PATTON, Governor  
COLE ZULAUF, Chair

### EDUCATION, ARTS AND HUMANITIES CABINET Kentucky Commission on the Deaf and Hard of Hearing

#### 735 KAR 2:040E. Interpreter protocols.

RELATES TO: KRS 12.290, 163.510(4)

STATUTORY AUTHORITY: KRS 163.510, House Bill 321 (1998), Commonwealth Budget Final Budget Memorandum, FB 1998-2000  
EFFECTIVE: June 30, 1998

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to implement KRS 163.510(4) which authorizes the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) to oversee the provision of interpreting services and to provide such services if necessary. House Bill 321 (1998) and the Commonwealth Budget Final Budget Memorandum specifically authorizes the KCDHH to provide interpreter referral services to state agencies. This administrative regulation establishes the interpreter protocols.

Section 1. (1) All interpreters, staff and freelance, shall:

(a) Keep all assignment related information strictly confidential;

(b) Be impartial to the proceedings;

(c) Recognize and work within their range of abilities and not accept assignments beyond their skill level;

(d) Recognize when the communication ability or mode of the deaf person(s) may require the additional skills offered by a certified deaf interpreter and promptly communicate this need to the KCDHH Interpreter Referral Services staff;

(e) Be punctual and arrive at the assignment location fifteen (15)

minutes before the scheduled starting time to arrange logistics and preconference with the consumers and other interpreters.

(2) KCDHH Interpreter Referral Services interpreters will display professional demeanor and conduct by:

(a) Wearing professional clothing appropriate for the work being performed, such as skirts/dresses, slacks and jackets, or business suits.

(b) Treating deaf, hard of hearing and hearing consumers pleasantly, fairly and with respect.

(3) All contract and staff interpreters will comply with the Code of Ethics of either the national Registry of Interpreters for the Deaf or the National Association of the Deaf, which are incorporated by reference.

(a) The National Association of the Deaf Code of Ethics may be inspected or obtained by contacting the National Association of the Deaf, 814 Thayer Avenue, Silver Spring, Maryland 20910. The phone number is: (301) 587-1788 V or (301) 587-1789 TTY. The fax number is: (301) 587-1791

(b) The national Registry of Interpreters for the Deaf Code of Ethics may be inspected or obtained by contacting the national Registry of Interpreters for the Deaf, 8630 Fenton Avenue, Suite 324, Silver Spring, Maryland 20910-3919. The phone number is: (301) 608-0050 V/TTY. The fax number is: (301) 608-0508.

(4) Assignment "ownership".

(a) If a contracted interpreter is unable to fill the assignment because of illness or other unforeseen conflicts, they must contact the referral service as soon as they are aware of the conflict.

(b) The staff of the KCDHH Interpreter Referral Services is responsible to contact and attempt to secure the replacement interpreters for the assignment.

(5) The KCDHH Interpreter Referral Services Program, pending availability of resources, may provide professional development opportunities for all contract and staff interpreters. Such professional development opportunities may include, but are not limited to:

(a) Mentoring program;

(b) Diagnostic assessment and feedback; and

(c) Support for interpreter training opportunities.

D. COLE ZULAUF, Chair

DIANE FLEMING, Attorney at Law

Contact person: Bobbie Beth Scoggins, Ed.D., Executive Director, Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky 40601, (502) 573-2604 V/T, (502) 573-3594 Fax.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Bobbie Beth Scoggins, Ed.D.

(1) Type and number of entities affected: These services are provided to entities that are commonly known as state agencies which include the following: all agencies of the executive branch with the exception of state-supported universities; the legislative branch, including the Legislative Research Commission.

(2) Direct and indirect cost or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented and to the extent available from the public comments received: No impact on the cost of living. Employment opportunities will be increased because the KCDHH will make interpreter/transliterator services readily available to state agencies thereby increasing employment opportunities for interpreters and transliterators.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No change.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No additional costs for any state agency and insignificant effect on competition because the KCDHH Interpreter Referral Services will serve only state agencies. The impact on state agencies will be lower costs and more streamlined operations, because the task of locating an available interpreter will be provided by the KCDHH Interpreter Referral Services and won't require hours of agency staff time calling to locate available interpreters. No additional paperwork requirements to outside agencies.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs increase in the first year because the office and personnel need to be set up in order to begin providing KCDHH Interpreter Referral Services.

2. Continuing costs or savings: After the first year, the recurring costs will be primarily personnel (three) and operating costs.

3. Additional factors increasing or decreasing costs: None, other than cost of living increases in personnel and operating expenses.

(b) Reporting and paperwork requirements: Standard paperwork as required under KRS Chapter 45A and to appropriately document requests for interpreting services. The KCDHH has considerable on-line resources which eliminates duplication of paperwork and enhances staff productivity.

(4) Assessment of the anticipated effect on state and local revenue: None

(5) Source of Revenue to be used for implementation and enforcement of the administrative regulation: General Funds Appropriation

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographic area in which administrative regulation will be implemented: Increase in employment opportunities for interpreters and transliterators.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods: Reasons why alternatives were rejected: The only other alternative to providing interpreting services is to have each state agency utilize its own personnel to spend extensive time and resources in locating and securing the services of a qualified interpreter or transliterator. This is not a cost effective alternative; thus, the establishment of KCDHH Interpreter Referral Services.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare on the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(10) Any additional information or comments: The KCDHH Interpreter Referral Service will remove the administrative burden of obtaining the services of an interpreter for a deaf/hard of hearing consumer from the government agency. Maintaining interpreting services in a central operation will streamline efforts, in keeping with the "Empower Kentucky" philosophy of making Kentucky government procedures more responsive to its constituents. The service will also eliminate duplication of state agencies' personnel efforts to locate interpreters.

(11) TIERING: Is tiering applied? No. Tiering was not appropriate because the program is a voluntary program for state agencies to receive assistance in obtaining interpreters for deaf or hard of hearing citizens accessing state services or deaf or hard of hearing state employees. No mandates are imposed on state agencies. The administrative regulation applies equally to all state agencies.

#### STATEMENT OF EMERGENCY 735 KAR 2:050E

This emergency administrative regulation establishes the procedure for processing of requests for services from the Interpreter Referral Services Program. In order to implement this program by July 1, 1998 as mandated by KRS 163.510, House Bill 321 (1998) and the Commonwealth Budget Final Budget Memorandum, FB 1998-2000, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler at the same time as the emergency administrative regulation is filed.

PAUL PATTON, Governor  
COLE ZULAUF, Chair

EDUCATION, ARTS AND HUMANITIES CABINET  
Kentucky Commission on the Deaf  
and Hard of Hearing

735 KAR 2:050E. Processing of requests for services.

RELATES TO: KRS 12.290, 163.510(4)

STATUTORY AUTHORITY: KRS 163.510, House Bill 321 (1998),  
Commonwealth Budget Final Budget Memorandum, FB 1998-2000  
EFFECTIVE: June 30, 1998

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to implement KRS 163.510(4) which authorizes the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) to oversee the provision of interpreting services and to provide such services if necessary. House Bill 321 (1998) and the Commonwealth Budget Final Budget Memorandum specifically authorizes the KCDHH to provide interpreter referral services to state agencies. This administrative regulation establishes the process for requesting services.

Section 1. (1) Requests for interpreting services must come from an entity as defined in 735 KAR 2:020(1) and include the following information:

- (a) Date and time of interpreted event;
  - (b) Expected length of the interpreted event;
  - (c) Consumer (deaf) and client (agency) names;
  - (d) Consumer communication preference (if known);
  - (e) Assignment location;
  - (f) Type of event to be interpreted, i.e. one (1) to one (1) situation, small group meeting, or platform presentation;
  - (g) On-site contact person and phone number;
  - (h) Any request for a specific interpreter;
  - (i) Any pertinent billing information including, at a minimum:
    1. Purchase order/interaccount numbers;
    2. Authorizing agency contact person;
    3. Billing address and phone number(s);
  - (j) Any additional information such as directions to the event location, or identification of special needs such as tactile interpreting requests, specialized vocabulary, etc.
- (2) Entities may submit requests for interpreting services to the KCDHH by one (1) of the following means:
- (a) Phone calls made directly to the staff of the KCDHH Interpreter Referral Services;
  - (b) Faxed form;
  - (c) Electronic form submittal via email or the KCDHH WWW home page;
  - (d) Letter;
  - (e) In person; or
  - (f) Videoconferencing.

(3) In making a request for interpreting services from the KCDHH Interpreter Referral Services, the requesting agency is entering a binding agreement with the KCDHH under the auspices of KRS Chapter 45A with all terms and conditions as outlined in this administrative regulation.

(4) KCDHH can best serve agencies that submit requests for interpreting services at least two (2) weeks in advance of the assignment date.

(5) KCDHH recognizes the need for an immediate response to some interpreting requests, i.e. pretrial services, and will make every effort to fill the request.

(6) The KCDHH Interpreter Referral Services staff, upon receiving a detailed request for an interpreting assignment, will locate an interpreter for the assignment by scheduling:

- (a) Staff interpreters, if available and qualified; then
- (b) Contract interpreters, if available and qualified.

(7) The KCDHH Interpreter Referral Services program will make every attempt to provide the requested interpreter whenever a specific interpreter is named in a request. However, the KCDHH cannot guarantee that it will be able to successfully honor every request.

(8) The KCDHH recognizes that the demand for interpreting services exceeds the existing supply of staff and freelance interpreters; therefore, the KCDHH will hire and assign interpreters based on the following criteria, in order of importance:

- (a) Those who hold a current and valid certification awarded by a

nationally recognized organization;

(b) Highly qualified, based on:

1. Years of interpreting experience;
2. Demonstrable interpreting skill, as evidenced by screening, or precertification level;
3. Consumer preference;
4. Having no financial or personal conflict of interest, as defined by KRS Chapter 45A; and
5. Other criteria, as may be appropriate for the specific assignment.

(9) The KCDHH Interpreter Referral Services staff will notify the state agency of the name of the assigned interpreter(s).

(10) Due to the high demand for interpreting services and for specialized skill, the KCDHH Interpreter Referral Services Program reserves the right to reassign interpreters, as appropriate, based on skill level and qualifications. In the event that an assigned interpreter should be reassigned, the KCDHH Interpreter Referral Services staff will notify the state agency of the name of the replacement interpreter.

(11) The KCDHH Interpreter Referral Services staff will notify the interpreter of the details of the assignment, including any communication preferences, special terminology, the date, the time and the location prior to the actual date of the assignment.

(12) The client or consumer has the right to refuse the services of an interpreter and request a replacement. If the client or consumer decides to request a replacement interpreter at the time of the scheduled event, the KCDHH Interpreter Referral Service will make every effort to fill the request. The client and consumer may need to reschedule the event, if there is no readily available replacement interpreter.

D. COLE ZULAUF, Chair

DIANE FLEMING, Attorney at Law

Contact person: Bobbie Beth Scoggins, Ed.D., Executive Director, Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky 40601, (502) 573-2604 V/T, (502) 573-3594 Fax.

REGULATORY IMPACT ANALYSIS

Contact Person: Bobbie Beth Scoggins, Ed.D.

(1) Type and number of entities affected: These services are provided to entities that are commonly known as state agencies which include the following: all agencies of the executive branch with the exception of state-supported universities; the legislative branch, including the Legislative Research Commission.

(2) Direct and indirect cost or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented and to the extent available from the public comments received: No impact on the cost of living. Employment opportunities will be increased because the KCDHH will make interpreter/transliterater services readily available to state agencies thereby increasing employment opportunities for interpreters and transliterators.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No change.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No additional costs for any state agency and insignificant effect on competition because the KCDHH Interpreter Referral Services will serve only state agencies. The impact on state agencies will be lower costs and more streamlined operations, because the task of locating an available interpreter will be provided by the KCDHH Interpreter Referral Services and won't require hours of agency staff time calling to locate available interpreters. No additional paperwork requirements to outside agencies.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs increase in the first year because the office and personnel need to be set up in order to begin providing KCDHH Interpreter Referral Services.

2. Continuing costs or savings: After the first year, the recurring costs will be primarily personnel (three) and operating costs.

3. Additional factors increasing or decreasing costs: None, other than cost of living increases in personnel and operating expenses.

(b) Reporting and paperwork requirements: Standard paperwork as required under KRS Chapter 45A and to appropriately document requests for interpreting services. The KCDHH has considerable on-line resources which eliminates duplication of paperwork and enhances staff productivity.

(4) Assessment of the anticipated effect on state and local revenue: None

(5) Source of revenue to be used for implementation and enforcement of the administrative regulation: General Funds Appropriation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographic area in which administrative regulation will be implemented: Increase in employment opportunities for interpreters and transliterators.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods: Reasons why alternatives were rejected: The only other alternative to providing interpreting services is to have each state agency utilize its own personnel to spend extensive time and resources in locating and securing the services of a qualified interpreter or transliterator. This is not a cost effective alternative; thus, the establishment of KCDHH Interpreter Referral Services.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare on the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(10) Any additional information or comments: The KCDHH Interpreter Referral Service will remove the administrative burden of obtaining the services of an interpreter for a deaf/hard of hearing consumer from the government agency. Maintaining interpreting services in a central operation will streamline efforts, in keeping with the "Empower Kentucky" philosophy of making Kentucky government procedures more responsive to its constituents. The service will also eliminate duplication of state agencies' personnel efforts to locate interpreters.

(11) TIERING: Is tiering applied? No. Tiering was not appropriate because the program is a voluntary program for state agencies to receive assistance in obtaining interpreters for deaf or hard of hearing citizens accessing state services or deaf or hard of hearing state employees. No mandates are imposed on state agencies. The administrative regulation applies equally to all state agencies.

#### STATEMENT OF EMERGENCY 735 KAR 2:060E

This emergency administrative regulation establishes grievance procedures for the Interpreter Referral Services Program. In order to implement this program by July 1, 1998, as mandated by KRS 163.510, House Bill 321 (1998) and the Commonwealth Budget Final Budget Memorandum, FB 1998-2000, it is necessary to promulgate this emergency administrative regulation. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation will be filed with the Regulations Compiler at the same time as the emergency administrative regulation is filed.

PAUL PATTON, Governor  
COLE ZULAUF, Chair

#### EDUCATION, ARTS, AND HUMANITIES CABINET Kentucky Commission on the Deaf and Hard of Hearing

#### 735 KAR 2:060E. Grievance procedures.

RELATES TO: KRS 12.290, 163.510(4)

STATUTORY AUTHORITY: KRS 163.510, House Bill 321 (1998), Commonwealth Budget Final Budget Memorandum, FB 1998-2000

EFFECTIVE: June 30, 1998

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessary to implement KRS 163.510(4) which authorizes the Kentucky Commission on the Deaf and Hard of Hearing (KCDHH) to oversee the provision of interpreting services and to provide such services if necessary. House Bill 321 (1998) and the Commonwealth Budget Final Budget Memorandum specifically authorizes the KCDHH to provide interpreter referral services to state agencies. This administrative regulation establishes a process for receiving and handling complaints against interpreters, state agencies or the referral services.

Section 1. (1) Grievances may be filed against the:

- (a) Interpreter;
- (b) State agency; or
- (c) KCDHH Interpreter Referral Services.

(2) All grievances shall be submitted in writing or on video within ninety (90) days of the event in question to the Executive Director of the Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky, 40601 and must include:

- (a) Name, address, and phone number of person filing the grievance;
- (b) Name and role (i.e., interpreter, state agency) of person(s) against whom the grievance is being filed;
- (c) Date, time and location of the alleged violation;
- (d) Description of the alleged violation and, if known, reference made to the NAD or RID Code of Ethics that were allegedly violated; and

(e) Signature of the complainant.

(3) Anonymous grievances will not be recognized.

(4) The KCDHH Interpreter Referral Services staff will investigate the alleged grievance within thirty (30) days of receiving the grievance.

(5) Copies of the grievance shall be made available to the:

- (a) Complainant;
  - (b) Respondent (person grievance is against);
  - (c) Witnesses; and
  - (d) All other pertinent parties to the grievance or the investigation.
- (6) The KCDHH Interpreter Referral Services staff shall submit a written decision within sixty (60) days of receiving the grievance which may result in:

- (a) Mediation among the involved parties; or
- (b) The grievance being referred to the national certifying body, if the grievance is of serious nature; or
- (c) Dismissal of grievance; or
- (d) The KCDHH Interpreter Referral Service has the right to discontinue utilizing the services of an interpreter based on the findings of a grievance.

(7) If the decision of the KCDHH Interpreter Referral Services program staff is appealed, the KCDHH Interpreter Services Advisory Board shall review the decision and make a ruling.

(8) If the decision of KCDHH Interpreter Services Advisory Board is appealed, then the Executive Director of the KCDHH shall review the decision and make a ruling.

(9) If the decision of the Executive Director of the KCDHH is appealed, then the commissioners of the KCDHH shall review the decision and make a ruling.

(10) If the decision of the commissioners of the KCDHH is appealed, then the KCDHH shall comply with all provisions of KRS Chapter 13B.

(11) All records of grievances filed and the proceedings shall be kept at the KCDHH offices in accordance with the Open Records and Open Meetings Law.

D. COLE ZULAUF, Chair  
DIANE FLEMING, Attorney at Law

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

Contact person: Bobbie Beth Scoggins, Ed.D., Executive Director, Kentucky Commission on the Deaf and Hard of Hearing, 632 Versailles Road, Frankfort, Kentucky 40601, (502) 573-2604 V/T, (502) 573-3594 Fax.

### REGULATORY IMPACT ANALYSIS

Contact Person: Bobbie Beth Scoggins, Ed.D.

(1) Type and number of entities affected: These services are provided to entities that are commonly known as state agencies which include the following: all agencies of the executive branch with the exception of state-supported universities; the legislative branch, including the Legislative Research Commission.

(2) Direct and indirect cost or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented and to the extent available from the public comments received: No impact on the cost of living. Employment opportunities will be increased because the KCDHH will make interpreter/transliterator services readily available to state agencies thereby increasing employment opportunities for interpreters and transliterators.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented: No change.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No additional costs for any state agency and insignificant effect on competition because the KCDHH Interpreter Referral Services will serve only state agencies. The impact on state agencies will be lower costs and more streamlined operations, because the task of locating an available interpreter will be provided by the KCDHH Interpreter Referral Services and won't require hours of agency staff time calling to locate available interpreters. No additional paperwork requirements to outside state agencies except if a grievance is filed. It must be submitted in writing.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Costs increase in the first year because the office and personnel need to be set up in order to begin providing KCDHH Interpreter Referral Services.

2. Continuing costs or savings: After the first year, the recurring costs will be primarily personnel (three) and operating costs.

3. Additional factors increasing or decreasing costs: None, other than cost of living increases in personnel and operating expenses.

(b) Reporting and paperwork requirements: Standard paperwork as required under KRS Chapter 45A and to appropriately document requests for interpreting services. The KCDHH has considerable on-line resources which eliminates duplication of paperwork and enhances staff productivity.

(4) Assessment of the anticipated effect on state and local revenue: None

(5) Source of Revenue to be used for implementation and enforcement of the administrative regulation: General Funds Appropriation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographic area in which administrative regulation will be implemented: Increase in employment opportunities for interpreters and transliterators.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods: Reasons why alternatives were rejected: The only other alternative to providing interpreting services is to have each state agency utilize its own personnel to spend extensive time and resources in locating and securing the services of a qualified interpreter or transliterator. This is not a cost effective alternative; thus, the establishment of KCDHH Interpreter Referral Services.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare on the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(10) Any additional information or comments: The KCDHH Interpreter Referral Service will remove the administrative burden of obtaining the services of an interpreter for a deaf/hard of hearing consumer from the government agency. Maintaining interpreting services in a central operation will streamline efforts, in keeping with the "Empower Kentucky" philosophy of making Kentucky government procedures more responsive to its constituents. The service will also eliminate duplication of state agencies' personnel efforts to locate interpreters.

(11) TIERING: Is tiering applied? No. Tiering was not appropriate because the program is a voluntary program for state agencies to receive assistance in obtaining interpreters for deaf or hard of hearing citizens accessing state services or deaf or hard of hearing state employees. No mandates are imposed on state agencies. The administrative regulation applies equally to all state agencies.

### STATEMENT OF EMERGENCY 750 KAR 2:010E

Pursuant to KRS 13A.190, the Governor of the Commonwealth of Kentucky does hereby declare that the proposed administrative regulation, 750 KAR 2:010E, should be enacted on an emergency basis in order to allow local school districts to match an offer of assistance in technology with federal dollars designated for purchasing the appropriate technology according to the Technology Master Plan. The current administrative regulation allows a local school district to match an offer of assistance in technology only with funds from their local general fund. Two (2) recent events have brought about a need for revision. This year, for the first time, financial assistance was made available to Kentucky public school districts through Technology Literacy Challenge Funds provided by the federal Congress. In addition, the recently passed biennium state budget for 1998-2000 will provide considerably more funds for the state share than ever before. These state funds must be matched locally dollar for dollar. State technology monies for 1998-99 will be available for use immediately as of July 1, 1998, and schools are attempting to procure the technology for the fall semester. At the present time, sixty-four (64) districts have plans approved by the Kentucky Board of Education and will be tendered an offer of assistance on July 1, 1998. By October 1, 1998, 120 of the 176 school districts will have received offers of assistance. If an emergency administrative regulation is not promulgated, sixty-eight (68) percent of the districts will not have the opportunity to use these federal dollars as part of their local match this fiscal year. Because only those districts who have documented a remaining unmet need for technology, as defined by the Master Plan, greater than 35 percent of the state standard for the period ending June 30, 1997, are eligible for these federal funds, and the amount the local district receives is based upon the district's percentage of the statewide total of children living in poverty, the neediest districts will be affected. Therefore, this action will enhance the core concept of equity called for by the Kentucky Education Reform Act (KERA). This emergency administrative regulation shall be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor  
DR. ROBERT TARVIN, Executive Director

### FINANCE AND ADMINISTRATION CABINET School Facilities Construction Commission

750 KAR 2:010E. Education Technology Funding Program guidelines.

RELATES TO: KRS 157.615, 157.650, 157.655, 157.660, 157.665

STATUTORY AUTHORITY: KRS 157.615, 157.655(3), 157.660(3)

EFFECTIVE: July 1, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 157.617(1)



authorizes the commission to promulgate administrative regulations necessary for the orderly conduct of its affairs, which includes the education technology funding program. KRS 157.660(3) requires the commission to promulgate administrative regulations by which a district that receives an offer of assistance but does not have the local match shall be able to accumulate a credit for the state offer of assistance for a period not to exceed three (3) years. This administrative regulation establishes the procedures and guidelines for determining the eligibility and level of participation for a local public school district, for making an offer of assistance to a school district, for verifying a local public school district funding match, and for the accumulation of credits by a local public school district that maintains its eligibility.

Section 1. Sources of Local Matching Funds. A local public school district shall match the state offer of assistance from:

- (1) Available state, local district, and federal funds not otherwise restricted by the appropriate governing agency [its general fund];
- (2) The proceeds of a revenue bond or note that is:
  - (a) Issued on behalf of a district to purchase technology equipment supported by the district's general fund; and
  - (b) To be retired within three (3) years from the date of issuance;
  - (3) A vendor or third party lender lease;
  - (4) A grant from a private source; [or]
  - (5) Interest earned by a district on a school building construction account, if the interest is not already committed for expenditure on the construction project; or
  - (6) Interest earned on the "Education Technology Fund" account.

Section 2. Offers of Assistance. (1) Funds available within the Education Technology Escrow Account shall be distributed to a local school district for installation of the Kentucky Education Technology System ("KETS") through the cooperative program established by KRS 157.650 to 157.665, and as provided by this section.

(2) Upon certification of the rate of participation to the commission, the commission's executive director shall notify an eligible district in writing of:

- (a) The amount the district is entitled to receive; and
- (b) The conditions KRS 157.655(1) and 157.660(2) requires the district to meet if it accepts the offer of acceptance.

Section 3. Acceptance of Offers of Assistance. (1) The local board of education shall notify the commission in writing whether it accepts an offer of assistance within sixty (60) days after receipt of the offer of assistance. The local board's response shall indicate how much of the amount of the offer the district plans to accept. If a school district does not have local matching funds available when the commission's offer of assistance is received, the district may accumulate credits for up to three (3) years from the date of the offer of assistance. If a district does not respond within sixty (60) days after receipt of the offer of assistance, it shall be deemed to have rejected the offer of assistance and the amount of the offer shall be redistributed to remaining eligible districts. Upon written request received from a district within the original sixty (60) day period, a single thirty (30) day extension in responding to an offer of assistance shall be granted by the executive director.

(2) The local school district shall provide to the commission a copy of its board's minutes reflecting acceptance of an offer of assistance. Upon acceptance of an offer of assistance, a local school district shall establish an "Education Technology Fund", which shall bear interest on the balance in the fund. The interest received on the fund shall be applied to meet educational technology needs in the school district. The district shall provide the commission evidence of a journal entry certifying local matching funds in the technology fund.

DR. ROBERT TARVIN, Executive Director

ANGELA C. ROBINSON, Attorney

APPROVED BY AGENCY: June 24, 1998

FILED WITH LRC: July 1, 1998 at 4 p.m.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Dr. Robert Tarvin

(1) Type and number of entities affected: 176 public school districts in the state.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. None

(c) Compliance, reporting and paperwork requirements of those affected, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: General fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Should permit local school districts to have access to more state funds for technology.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Not appropriate.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, rule, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: Change will more effectively utilize federal funds available for technology in public school districts.

(11) TIERING: Is tiering applied? No. Under this administrative regulation, all school districts will be allowed to use federal funds for their local match. However, because only the neediest school districts are eligible for the federal funds, these districts will be more affected.

#### STATEMENT OF EMERGENCY 787 KAR 1:200E

This administrative regulation sets forth the maximum weekly benefit rate allowed for unemployment insurance benefit claimants during the year beginning July 1, 1998, and ending June 30, 1999. Under KRS Chapter 13A, the Workforce Development Cabinet is required to implement this administrative regulation in order to have sufficient authority for the declaring of a maximum benefit rate. Therefore, in order to properly establish a maximum weekly unemployment insurance rate for the year beginning July 1, 1998, it is necessary that the Workforce Development Cabinet implement this emergency administrative regulation. An ordinary administrative regulation will not suffice because the correct weekly benefit amount would not be declared in a time for claims filed in July. This emergency administrative regulation will be replaced by an ordinary administrative regulation in accordance with KRS Chapter 13A. A "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler along with the emergency administrative regulation.



PAUL E. PATTON, Governor  
MARGARET WHITTET, Commissioner

**WORKFORCE DEVELOPMENT CABINET**  
**Department for Employment Services**  
**Division of Unemployment Insurance**

**787 KAR 1:200E. Maximum weekly benefit rate.**

RELATES TO: KRS 341.380

STATUTORY AUTHORITY: KRS 151B.020, 341.115

EFFECTIVE: June 30, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 341.380(3) requires the Secretary for Workforce Development to determine the average weekly wage for insured employment. Fifty-five (55) percent of this amount adjusted to the nearest multiple of one (1) dollar constitutes the maximum weekly unemployment insurance benefit rate for those workers whose benefit year commences on or after July 1, 1998 [1997], and prior to July 1, 1999 [1998]. This administrative regulation applies the mathematical computation required by statute and contains the determination of the maximum weekly benefit rate.

Section 1. The secretary finds the following to exist:

- (1) The "total monthly employment" reported by subject employers for the calendar year of 1997 [1996] was 19,426,207 [18,934,441];
- (2) The "average monthly employment," obtained by dividing the total monthly employment by twelve (12), was 1,618,851 [1,577,870];
- (3) The "total wages" reported by subject employers for the calendar year of 1997 [1996] was \$41,012,521,117 [38,182,050,349];
- (4) The "average weekly wage" for the calendar year of 1997 [1996] for insured employment, obtained by dividing the average monthly employment into the total wages for the year and dividing by fifty-two (52), was \$487.20 [465.36];
- (5) Fifty-five (55) percent of the average weekly wage of \$487.20 [465.36] for the calendar year of 1997 [1996] was \$267.96 [255.95].

Section 2. On the basis of the above findings, and in accordance with KRS 341.380(3), the maximum weekly benefit rate for those workers whose benefit year commences on or after the first day of July 1998 [1997], and prior to the first day of July 1999 [1998], shall be \$268 [256].

MARGARET WHITTET, Commissioner  
SUE SIMON, Acting General Counsel  
APPROVED BY AGENCY: June 23, 1998  
FILED WITH LRC: June 30, 1998 at noon

**REGULATORY IMPACT ANALYSIS**

Contact Person: Sue Simon

- (1) Type and number of entities affected: All eligible UI recipients for the year July 1, 1998, through June 30, 1999.
- (2) Direct and indirect costs or savings on the:
  - (a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
  - (b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None
  - (c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:
    1. First year: An additional \$6.2 million paid to eligible UI recipients.
    2. Second and subsequent years: None
    - (3) Effects on the promulgating administrative body:
      - (a) Direct and indirect cost or savings:
        1. First year: An additional \$6.2 million paid from the Unemployment Insurance Trust Fund to UI recipients.
        2. Continuing costs or savings: None
        3. Additional factors increasing or decreasing costs: The number of people filing UI claims may increase or decrease.
        - (b) Reporting and paperwork requirements: None
        - (4) Assessment of anticipated effect on state and local revenues: None

nues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 100% federal funds (BCAA).

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods available in accordance with statutory requirements.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: NA

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: NA

(10) Any additional information or comments: This regulation satisfies the statutory requirements of KRS 341.380(3), which mandates that the secretary determine the maximum weekly unemployment insurance benefit rate prior to July 1 of each year.

(11) TIERING: Is tiering applied? Tiering was not applied as all claimants are treated equally.

**FISCAL NOTE ON LOCAL GOVERNMENT**

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. All local government agencies could be affected, but only if they have unemployment insurance claims filed against them.

3. State the aspect or service of local government to which this administrative regulation relates. Relates to their payment of unemployment benefits to former employees.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): None

Expenditures (+/-): Nondeterminable

Other Explanation: Effective July 1, 1998, the maximum weekly benefit rate will increase to \$268, an increase of \$12 per claim over the present rate of \$256. If a local government agency chooses to file and pay unemployment insurance taxes quarterly, this potential \$12 increase per claim could deplete their reserve account faster and create a deficit. If this were to occur, their tax rate would go up. If a local government agency chooses to be a reimbursing employer, where they would pay out of the reserve account dollar for dollar for every claim filed against them, their expenditures will likely increase.

**STATEMENT OF EMERGENCY**  
**803 KAR 2:306E**

This emergency administrative regulation updates, in Section 3(1)(a), the reference to the Code of Federal Regulations, and in Section 3(1)(b) incorporates, by reference, a publication in the Federal Register, dated January 8, 1998, which revises the respiratory protection provisions of the standard dealing with ventilation. The revision to Section 1(8) changes the definition to meet KRS Chapter 13A considerations. It is necessary to promulgate this emergency administrative regulation to comply with the federal mandate, 29 CFR 1953.23, requiring implementation of the federal standard, or one (1) more stringent, within six (6) months of the date of promul-

gation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler, July 2, 1998.

PAUL E. PATTON, Governor  
JOE NORSWORTHY, Chairman

**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and Health Education and Training**

**803 KAR 2:306E. Occupational health and environmental control.**

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910

EFFECTIVE: July 2, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) "U.S. Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Department of Labor.

Section 2. Occupational Noise Exposure. (1) The language relating to audiometric test requirements for occupational noise exposure in subsection (2) of this section shall apply in lieu of 29 CFR 1910.95(h)(1).

(2) 29 CFR 1910.95(h)(1) is amended to read: Audiometric tests shall be pure tone, air conduction, hearing threshold examinations with test frequencies including as a minimum 500, 1,000, 2,000, 3,000, 4,000, and 6,000 Hz. Testing at 8,000 Hz must be included in the audiometric tests for employers using audiometers with that capacity and all audiometric tests must include 8,000 Hz after January 15, 1985.

(3) The language relating to audiometric test requirements for occupational noise exposure in subsection (4) of this section shall apply in lieu of 29 CFR 1910.95(h)(4).

(4) 29 CFR 1910.95(h)(4) is amended to read: Audiometric examinations shall be administered in a room meeting the requirements listed in Appendix D: Audiometric Test Rooms. When an audiometric test room is located in a mobile test van, background sound pressure level measurements shall be taken at each testing location.

(5) The language relating to audiometric test requirements for

occupational noise exposure in subsection (6) of this section shall apply in lieu of 29 CFR 1910.95(h)(5)(ii).

(6) 29 CFR 1910.95(h)(5)(ii) shall read: Audiometer calibration shall be checked acoustically at least annually in accordance with Appendix E: Acoustic Calibration of Audiometers. Test frequencies below 500 Hz and above 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) may be omitted from this check. Deviations of fifteen (15) decibels or greater require an exhaustive calibration.

(7) The language relating to audiometric test requirements for occupational noise exposure in subsection (8) of this section shall apply in lieu of 29 CFR 1910.95(h)(5)(iii).

(8) 29 CFR 1910.95(h)(5)(iii) is amended to read: An exhaustive calibration shall be performed at least every two (2) years in accordance with sections 4.1.2; 4.1.3; 4.1.4.3; 4.2; 4.4.1; 4.4.2; 4.4.3; and 4.5 of the American National Standard Specification for Audiometers, S3.6-1969. Test frequencies below 500 Hz and above 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) may be omitted from this calibration.

(9) The language relating to access to information and training materials requirements for occupational noise exposure in subsection (10) of this section shall apply in lieu of 29 CFR 1910.95(l)(1).

(10) 29 CFR 1910.95(l)(1) is amended to read: The employer shall make available to affected employees or their representatives copies of this standard and shall also post a notice of the availability of this standard in the workplace.

(11) The language relating to exemptions to the regulation for occupational noise exposure requirements in subsection (12) of this section shall apply in lieu of 29 CFR 1910.95(o).

(12) 29 CFR 1910.95(o) is amended to read: Paragraphs (c) through (n) of this section shall not apply to employers engaged in oil and gas well drilling and servicing operations, agriculture, or construction.

(13) The language relating to acoustical calibration of audiometers for occupational noise exposure in subsection (14) of this section shall apply in lieu of 29 CFR 1910.95 Appendix E.

(14) 29 CFR 1910.95 Appendix E shall read: Acoustic Calibration of Audiometers.

**This Appendix is Mandatory.**

Audiometer calibration shall be checked acoustically, at least annually, according to the procedures described in this Appendix. The equipment necessary to perform these measurements is a sound level meter, octave-band filter set, and a National Bureau of Standards 9A coupler. In making these measurements, the accuracy of the calibrating equipment shall be sufficient to determine that the audiometer is within the tolerances permitted by American Standard Specification for Audiometers, S3.6-1969.

(a) Sound pressure output check.

1. Place the earphone coupler over the microphone of the sound level meter and place the earphone on the coupler.

2. Set the audiometer's hearing threshold level (HTL) dial to seventy (70) dB.

3. Measure the sound pressure level of the tones that each test frequency from 500 Hz through 8,000 Hz (6,000 Hz until January 15, 1985 for audiometers without 8,000 Hz capability) for each earphone.

4. At each frequency the readout on the sound level meter should correspond to the levels in Table E-1 or Table E-2, as appropriate, for the type of earphone, in the column entitled "sound level meter reading".

(b) Linearity check.

1. With the earphone in place, set the frequency to 1,000 Hz and the HTL dial on the audiometer to seventy (70) dB.

2. Measure the sound levels in the coupler at each ten (10) dB decrement from seventy (70) dB to ten (10) dB, noting the sound level meter reading at each setting.

3. For each ten (10) dB decrement on the audiometer the sound level meter should indicate a corresponding ten (10) dB decrease.

4. This measurement may be made electrically with a voltmeter connected to the earphone terminals.

(c) Tolerances. When any of the measured sound levels deviate from the levels in Table E-1 or Table E-2 plus or minus three (3) dB at any test frequency between 500 and 3,000 Hz, four (4) dB at 4,000

# VOLUME 25, NUMBER 2 – AUGUST 1, 1998

Hz, or five (5) dB at 6,000 Hz and 8,000 Hz, an exhaustive calibration is advised. An exhaustive calibration is required if the deviations are greater than ten (10) dB at any test frequency.

TABLE E-1 - REFERENCE THRESHOLD LEVELS FOR TELEPHONICS-TDH-39 EARPHONES

Frequency, Hz	Reference threshold level for TDH-39 earphones, dB	Sound level meter level meter reading dB
500	11.5	81.5
1000	7.07	7.0
2000	9.07	9.0
3000	10.0	80.0
4000	9.57	9.5
6000	15.5	85.5
8000	13.0	83.0

TABLE E-2 - REFERENCE THRESHOLD LEVELS FOR TELEPHONICS-TDH-49 EARPHONES

Frequency, Hz	Reference threshold level for TDH-49 earphones, dB	Sound level meter level meter reading dB
500	13.5	83.5
1000	7.5	77.5
2000	11.0	81.0
3000	9.5	79.5
4000	10.5	80.5
6000	13.5	83.5
8000	13.0	83.0

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The material in paragraphs 1 through 7 of this subsection, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1997 [1995], is incorporated by reference:

1. 29 CFR 1910.94 through 1910.95(g)(10)(ii);
2. 29 CFR 1910.95(h)(2) through 29 CFR 1910.95(h)(3);
3. 29 CFR 1910.95(h)(5)(i) through 29 CFR 1910.95(h)(5)(ii);
4. 29 CFR 1910.95(i)(1) through 29 CFR 1910.95(k)(2)(iii);
5. 29 CFR 1910.95(l)(2) through 29 CFR 1910.95(n)(2);
6. 29 CFR 1910.95(q) through 29 CFR 1910.95 Appendix D;
7. 29 CFR 1910.95 Appendix F through 29 CFR 1910.100.

(b) The revisions to 29 CFR 1910.94, "Ventilation", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference. [The revisions to 29 CFR 1910.94, "Ventilation", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(c) The revisions to 29 CFR 1910.95, "Occupational Noise Exposure", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(d) The revision of 29 CFR 1910.96, "Ionizing Radiation", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(e) The revision to 29 CFR 1910.97, "Nonionizing Radiation", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(f) The removal of 29 CFR 1910.99, "Sources of Standards", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(g) The removal of 29 CFR 1910.100, "Standards Organizations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.]

(2) The language relating to audiometric testing in Section 2(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.95(h)(1).

(3) The language relating to audiometric testing in Section 2(4) of this administrative regulation shall apply in lieu of 29 CFR 1910.95(h)(4).

(4) The language relating to audiometric testing in Section 2(6) of

this administrative regulation shall apply in lieu of 29 CFR 1910.95(h)(5)(ii).

(5) The language relating to audiometric testing in Section 2(8) of this administrative regulation shall apply in lieu of 29 CFR 1910.95(h)(5)(iii);

(6) The language relating to access to information and training materials requirements for occupational noise exposure in subsection (10) of this section shall apply in lieu of 29 CFR 1910.95(l)(1);

(7) 29 CFR 1910.95(o) is amended to read: Paragraphs (c) through (n) of this section shall not apply to employers engaged in oil and gas well drilling and servicing operations, agriculture, or construction.

(8) The language relating to acoustical calibration of audiometers for occupational noise exposure in subsection (14) of this section shall apply in lieu of 29 CFR 1910.95 Appendix E;

(9) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman  
KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: June 23, 1998

FILED WITH LRC: July 2, 1998 at 8 a.m.

## REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers in general industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of these proposed amendments, as these revisions, as published in the Federal Register, January 8, 1998, which revises the respiratory protection provisions of the standard dealing with ventilation, and update the reference to the Code of Federal Regulations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no cost effected from this revision.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these revisions will increase or decrease costs. There will be no affect on competition.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations incorporate, by reference, federal regulations

published in the Federal Register, and update the reference to the Code of Federal Regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

(b) State whether detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments adopt federal regulations and update the reference to the current Code of Federal Regulations.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions to the previously adopted regulation, 29 CFR 1910.94, "Ventilation", as published in the Federal Register, Volume 63, Number 5, January 8, 1998.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities that work with respiratory protection.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government who work with respiratory protection.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

#### STATEMENT OF EMERGENCY 803 KAR 2:307E

This emergency administrative regulation updates, in Section 3(1)(a), the reference to the Code of Federal Regulations, and in Section 3(1)(b) incorporates, by reference, a publication in the Federal Register, dated January 8, 1998, which revises the respiratory protection provisions of the standard dealing with storage and handling of anhydrous ammonia, revises the "NECESSITY, FUNCTION AND CONFORMITY" paragraph to meet KRS Chapter 13A considerations, and, in Section 1(8), changes the definition to meet KRS Chapter 13A considerations. It is necessary to promulgate this emergency administrative regulation to comply with the federal mandate, 29 CFR 1953.23, requiring implementation of the federal standard, or one (1) more stringent, within six (6) months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler, July 2, 1998.

PAUL E. PATTON, Governor  
JOE NORSWORTHY, Chairman

#### LABOR CABINET Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training

#### 803 KAR 2:307E. Hazardous materials.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910

EFFECTIVE: July 2, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may [Express authority to] incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions Applicable to this Part. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) "U.S. Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Department of Labor. [An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.]

Section 2. Automotive Service Station (Service Station). (1) The

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

language relating to automotive service stations (service stations) in subsection (2) of this section shall apply in lieu of 29 CFR 1910.106(a)(3).

(2) 29 CFR 1910.106(a)(3) is amended to read: The term automotive service station, or service stations, shall mean that portion of property where flammable or combustible liquids used as motor fuel are stored and dispensed from fixed equipment and into the fuel tanks of motor vehicles and shall include any facilities available for the sale and servicing of tires, batteries, accessories and for minor automotive maintenance work and shall also include private stations not accessible or open to the public such as those used by commercial, industrial or governmental establishments. This section shall not apply to agriculture.

Section 3. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The material in subparagraphs 1 through 2 of this paragraph, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1997 [1995], is incorporated by reference:

1. 29 CFR 1910.101 through 1910.106(a)(2);
2. 29 CFR 1910.106(a)(4) through 29 CFR 1910.120.

(b) The revisions to 29 CFR 1910.111, "Storage and Handling of Anhydrous Ammonia", as published in the Federal Register, Volume 63, Number 5, January 5, 1998, are incorporated by reference. [The revisions to 29 CFR 1910.101, "Compressed Gases (General Requirements)", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(c) The revisions to 29 CFR 1910.102, "Acetylene", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(d) The revisions to 29 CFR 1910.103, "Hydrogen", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(e) The revisions to 29 CFR 1910.104, "Oxygen", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(f) The revision to 29 CFR 1910.105, "Nitrous Oxide", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(g) The revisions to 29 CFR 1910.106, "Flammable and Combustible Liquids", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(h) The revisions to 29 CFR 1910.107, "Spray Finishing Using Flammable and Combustible Liquids", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(i) The revisions to 29 CFR 1910.108, "Dip Tanks Containing Flammable or Combustible Materials", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(j) The revisions to 29 CFR 1910.109, "Explosives and Blasting Agents", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(k) The revisions to 29 CFR 1910.110, "Storage and Handling of Liquefied Petroleum Gases", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(l) The revisions to 29 CFR 1910.111, "Storage and Handling of Anhydrous Ammonia", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(m) The removal of 29 CFR 1910.114, "Effective Dates", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(n) The removal of 29 CFR 1910.115, "Sources of Standards", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(o) The removal of 29 CFR 1910.116, "Standards Organizations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(p) The revision to 29 CFR 1910.119, "Process Management of Highly Hazardous Chemicals", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(q) The revisions to 29 CFR 1910.120, "Hazardous Waste Operations and Emergency Response", as published in the Federal Register,

Volume 61, Number 46, March 7, 1996, are incorporated by reference.]

(2) The language relating to automotive service stations (service stations) in Section 2(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.106(a)(3).

(3) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman

KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: June 23, 1998

FILED WITH LRC: July 2, 1998 at 8 a.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers in general industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of these proposed amendments, as these revisions, as published in the Federal Register, January 8, 1998, update reference material, update the reference to the Code of Federal Regulations, and change the "NECESSITY, FUNCTION AND CONFORMITY" paragraph and a definition to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no cost effected from these revisions.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these revisions will increase or decrease costs. There will be no effect on competition.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations incorporate, by reference, federal regulations published in the Federal Register, update the reference to the Code of Federal Regulations, and change the "NECESSITY, FUNCTION AND CONFORMITY" paragraph and a definition to meet KRS Chapter 13A considerations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

(b) State whether detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. If no, explain why tiering was not applied. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments incorporate federal regulations, update the reference to the current Code of Federal Regulations and change a definition to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions to the previously adopted regulation, 29 CFR 1910.111, "Storage and Handling of Anhydrous Ammonia", as published in the Federal Register, Volume 63, Number 5, January 8, 1998.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities that work that use, handle, or store anhydrous ammonia.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government who use, handle, or store anhydrous ammonia.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

#### STATEMENT OF EMERGENCY 803 KAR 2:308E

This emergency administrative regulation updates, in Section 2(1)(a) the reference to the Code of Federal Regulations, and in Section 2(1)(b) and (d), incorporates, by reference, a publication in the Federal Register, dated January 8, 1998 which revise the respiratory protection standard. The revision to Section 2(1)(c) incorpo-

rates, by reference, corrections to the final rule on respiratory protection as published in the Federal Register April 23, 1998. It is necessary to promulgate this emergency administrative regulation to comply with the federal mandate, 29 CFR 1953.23, requiring implementation of the federal standard, or one more stringent, within six (6) months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler, July 2, 1998.

PAUL E. PATTON, Governor  
JOE NORSWORTHY, Chairman

#### LABOR CABINET

Department of Workplace Standards  
Division of Occupational Safety and Health Compliance  
Division of Occupational Safety and Health Education and Training

#### 803 KAR 2:308E. Personal protective equipment.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910

EFFECTIVE: July 2, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. Express authority to incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) "U.S. Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Department of Labor.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR Part 1910, Subpart R, "Personal Protective Equipment," revised as of July 1, 1997, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(b) The revisions to 29 CFR 1910.134, "Respiratory Protection," as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(c) The corrections to 29 CFR 1910.134, "Respiratory Protection," as published in the Federal Register, Volume 63, April 23, 1998, are incorporated by reference.

(d) The addition of 29 CFR 1910.139, "Respiratory Protection for M. Tuberculosis," as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.



# VOLUME 25, NUMBER 2 – AUGUST 1, 1998

(2) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday. [Respiratory Protection: (1) The language relating to guidance for physicians in determining medical conditions that would preclude the use of respirators by individuals in subsection (2) of this section shall apply in lieu of 29 CFR 1910.134(b)(10):

(2) 29 CFR 1910.134(b)(10) is amended to read: A physician shall determine whether or not an employee has any medical conditions that would preclude the use of respirators. The physician shall follow the guidance in ANSI Z88.6, "American National Standard for Respiratory Protection-Respirator Use-Physical Qualifications for Personnel" on the frequency and content of the examination.

(3) The language relating to selection of respirators in subsection (4) of this section shall apply in lieu of 29 CFR 1910.134(c):

(4) 29 CFR 1910.134(c) is amended to read: Proper selection of respirators shall be made according to the guidance of American National Standard Practices for Respiratory Protection Z88.2 - 1980.

(5) The language relating to specifications for breathing air in subsection (6) of this section shall apply in lieu of 29 CFR 1910.134(d)(1):

(6) 29 CFR 1910.134(d)(1) is amended to read: Compressed air, compressed oxygen, liquid air, and liquid oxygen used for respiration shall be of high purity. Oxygen shall meet the requirements of the United States Pharmacopoeia for medical or breathing oxygen. Breathing air shall meet at least the requirements of the specification for Grade D breathing air as described in Compressed Gas Association Commodity Specification G-7.1 - 1973. Compressed oxygen shall not be used in supplied-air respirators or in open-circuit self-contained breathing apparatus that have previously used compressed air. Oxygen must never be used with air line respirators.

(7) The language relating to identification of gas mask canisters in subsection (8) of this section shall apply in lieu of 29 CFR 1910.134(g):

(8) 29 CFR 1910.134(g) is amended to read: Identification of Air-purifying Respirator Canisters and Cartridges:

(a) The primary means of identifying an air-purifying respirator canister or cartridge shall be by means of properly worded labels. The secondary means of identifying an air-purifying respirator canister or cartridge shall be by an identifying color or colors:

(b) All who issue or use air-purifying respirators falling within the scope of this standard shall ensure that all canisters and cartridges purchased or used by them are properly labeled and colored in accordance with this standard before they are placed in service and that the labels and colors are properly maintained at all times thereafter until the canisters and cartridges have completely served their purpose. The user shall refer to the label wording to determine the type and degree of protection the canister or cartridge will afford.

(c) On each air-purifying respirator canister and cartridge, the following shall appear in bold letters:

1. CANISTER FOR (Name of atmospheric contaminant); or CARTRIDGE FOR (Name of atmospheric contaminant);

2. In addition, either or both of subparagraphs 1 and 2 of this paragraph, information in clauses a, b, and c of this subparagraph, shall appear beneath the appropriate phrase on the canister or cartridge label:

a. For respiratory protection in atmospheres containing not more than (Concentration) by volume of (Name of atmospheric contaminant):

b. For respiratory protection in atmospheres containing (Type of particulate contaminant):

c. Do not use in atmospheres containing less than nineteen and five-tenths (19.5) percent oxygen by volume at sea level:

(d) Each respirator canister or cartridge, or canister or cartridge label, shall be a distinctive color as indicated in Table I-1. The color coating used shall offer a high degree of resistance to changes such as chipping, scaling, peeling, blistering, and fading, and to the effects of ordinary atmospheres to which they may be exposed under normal conditions of storage and use.

TABLE I-1  
Color Assigned to Canister or Cartridge

Atmospheric Contaminant(s) to Be Protected Against	Color Assigned	ISCC-NBS Centroid Color Number	ISCC-NBS Centroid Color Name
Acid gases	White	263	White
Organic vapors	Black	267	Black
Ammonia gas	Green	139	Vivid green
Carbon monoxide gas	Blue	178	Strong blue
Acid gases and organic vapors	Yellow	82	Vivid yellow
Acid gases, ammonia, and organic vapors	Brown	75	Deep yellow brown
Acid gases, ammonia, carbon monoxide, and organic vapors	Red	11	Vivid red
Other vapors and gases not listed above	Olive	106	Light olive
Radioactive materials (except tritium and noble gases)	Purple	218	Strong purple
Dusts, fumes, and mists (other than radioactive materials)	Orange	48	Vivid orange

## NOTES:

1) A purple (ISCC-NBS Centroid Number 218) stripe shall be used to identify radioactive materials in combination with any vapor or gas:

2) An orange (ISCC-NBS Centroid Number 48) stripe shall be used to identify dusts, fumes, and mists in combination with any vapor or gas:

3) Where labels only are colored to conform with this table, the canister or cartridge body shall be gray (ISCC-NBS Centroid Number 265), or a metal canister or cartridge body may be left in its natural metallic color:

4) The user shall refer to the wording of the label to determine the type and degree of protection the canister or cartridge will afford

Section 3. Incorporation by Reference: (1) The following material is incorporated by reference:

(a) The material in subparagraphs 1 through 4 of this paragraph, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1995, is incorporated by reference:

1. 29 CFR 1910.132 through 1910.134(b)(9);

2. 29 CFR 1910.134(b)(11);

3. 29 CFR 1910.134(d)(2) through 29 CFR 1910.134(f)(5)(iii);

4. 29 CFR 1910.135 through Appendix B to Subpart I.

(b) The revisions to 29 CFR 1910.133, "Occupational Noise Exposure", as published in the Federal Register, Volume 61, Number 86, May 2, 1996, are incorporated by reference:

(c) The revisions to 29 CFR 1910.135, "Head Protection", as published in the Federal Register, Volume 61, Number 86, May 2, 1996, are incorporated by reference:

(d) The revisions to 29 CFR 1910.136, "Foot Protection", as published in the Federal Register, Volume 61, Number 86, May 2, 1996, are incorporated by reference:

(2) The language relating to guidance for physicians in determining medical conditions that would preclude the use of respirators by individuals in Section 2(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.134(b)(10):

(3) The language relating to selection of respirators audiometric testing in Section 2(4) of this administrative regulation shall apply in lieu of 29 CFR 1910.134(c):

(4) The language relating to specifications for breathing air in Section 2(6) of this administrative regulation shall apply in lieu of 29 CFR 1910.134(d)(1):

(5) The language relating to identification of gas mask canisters in Section 2(8) of this administrative regulation shall apply in lieu of 29 CFR 1910.134(g):

(6) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.]



JOE NORSWORTHY, Chairman  
KEMBRA SEXTON TAYLOR, Attorney  
APPROVED BY AGENCY: June 23, 1998  
FILED WITH LRC: July 2, 1998 at 8 a.m.

# REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers within the jurisdiction of the Kentucky Occupational Safety and Health Program.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There will be no anticipated effect on the cost of living and employment.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: The amendments adopt revisions to 29 CFR 1910.134 as published in the Federal Register, Volume 63, Number 5, January 8, 1998. Nationwide, Federal OSHA estimates that the average costs of the revisions per covered employee will be \$22 per year.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these revisions will increase or decrease costs. There will be no effect on competition.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations incorporate, by reference, federal regulations as published in the Federal Register, and update the reference to the Code of Federal Regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

(b) State whether detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker

safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

# FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments adopt federal regulations and update the reference to the Code of Federal Regulations.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions to 29 CFR 1910.134 as published in the Federal Register, Volume 63, Number 5, January 8, 1998. The amendments also redesignate the existing federal respiratory protection standard as 29 CFR 1910.139 allowing it to remain in effect for respiratory protection against mycobacterium tuberculosis.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

# FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities that work with respiratory protection.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government who work with respiratory protection.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

# STATEMENT OF EMERGENCY 803 KAR 2:311E

This emergency administrative regulation changes the "NECESSITY, FUNCTION AND CONFORMITY" paragraph and, in Section 1(8), changes a definition to meet KRS Chapter 13A considerations, in Section 2(1)(a) updates the reference to the Code of Federal Regulations, and in Section 2(1)(b) incorporates, by reference, a publication in the Federal Register, dated January 8, 1998, which revises references. It is necessary to promulgate this emergency administrative regulation to comply with the federal mandate, 29 CFR 1953.23, requiring implementation of the federal standard, or one (1) more stringent, within six (6) months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler, July 2, 1998.

PAUL E. PATTON, Governor  
JOE NORSWORTHY, Chairman

**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and Health Education and Training**

**803 KAR 2:311E. Fire protection.**

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910

EFFECTIVE: July 2, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may [Express authority to] incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions Applicable to this Part. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) "U.S. Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Department of Labor. [An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.]

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR 1910.155-165, Subpart L, "Fire Protection", published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1997 [1995], is incorporated by reference.

(b) The revisions to 29 CFR 1910.156, "Fire Brigades", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference. [61, Number 46, March 7, 1996, are incorporated by reference.]

(c) ~~The revision to 29 CFR 1910.157, "Portable Fire Extinguishers", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.~~

(d) ~~The revisions to 29 CFR 1910.158, "Standpipe and Hose Systems", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.~~

(e) ~~The revision to Appendix D to 29 CFR Subpart L, "Availability of Publications Incorporated by Reference in Section 1910.156, Fire Brigades", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.]~~

(2) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman  
 KEMBRA SEXTON TAYLOR, Attorney  
 APPROVED BY AGENCY: June 23, 1998  
 FILED WITH LRC: July 2, 1998 at 8 a.m.

**REGULATORY IMPACT ANALYSIS**

Agency Contact: Kembra S. Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers in general industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of these proposed amendments, as these revisions change the "NECESSITY, FUNCTION AND CONFORMITY" paragraph and the format of a definition to meet KRS Chapter 13A considerations, update the reference to the current Code of Federal Regulations, and incorporate revisions, as published in the Federal Register, January 8, 1998, which update reference material.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no cost effected from this revision.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these revisions will increase or decrease costs. There will be no effect on competition.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations incorporate, by reference, federal regulations published in the Federal Register, change the "NECESSITY, FUNCTION AND CONFORMITY" paragraph and the format of a definition to meet KRS Chapter 13A considerations, and update the reference to the current Code of Federal Regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

(b) State whether detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments change the "NECESSITY, FUNCTION AND CONFORMITY" paragraph and the format of a definition to meet KRS Chapter 13A considerations, update the reference to the current Code of Federal Regulations, and incorporate revisions, as published in the Federal Register, January 8, 1998, which update reference material.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions to the previously adopted regulation, 29 CFR 1910.156 "Fire Brigades", as published in the Federal Register, Volume 63, Number 5, January 8, 1998.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities that employ professional fire fighters.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government who work fight fires.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

### STATEMENT OF EMERGENCY 803 KAR 2:316E

This emergency administrative regulation changes the "NECESSITY, FUNCTION AND CONFORMITY" paragraph and, in Section 1(8), a definition to meet KRS Chapter 13A considerations, in Section 2(1)(a) updates the reference to the Code of Federal Regulations, and in Section 2(1)(b) incorporates, by reference, a publication in the Federal Register, dated January 8, 1998, which revises references. It is necessary to promulgate this emergency administrative regulation to comply with the federal mandate, 29 CFR 1953.23, requiring implementation of the federal standard, or one (1) more stringent, within six (6) months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed

with the Regulations Compiler, July 2, 1998.

PAUL E. PATTON, Governor  
JOE NORSWORTHY, Chairman

### LABOR CABINET Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training

### 803 KAR 2:316E. Adoption of 29 CFR Part 1910.251-.257.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910

EFFECTIVE: July 2, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may (Express authority to) incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions Applicable to this Part. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) "U.S. Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Department of Labor. [An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S.-127 South, Frankfort, Kentucky]

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR 1910.251-.257, Subpart Q, "Welding, Cutting, and Brazing", revised as of July 1, 1997 [1995], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration is incorporated by reference.

(b) The revisions to 29 CFR 1910.252, "General Requirements," as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference. [The revision to 29 CFR 1910.251, "Definitions", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(c) The revisions to 29 CFR 1910.252, "General Requirements", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(d) The revisions to 29 CFR 1910.253, "Oxygen -- Fuel Gas Welding and Cutting", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(e) The revisions to 29 CFR 1910.254, "Arc Welding and Cutting", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

(f) The removal of 29 CFR 1910.256, "Sources of Standards", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.

(g) The removal of 29 CFR 1910.257, "Standards Organizations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.]

(2) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman

KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: June 23, 1998

FILED WITH LRC: July 2, 1998 at 8 a.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra S. Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers in general industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of these proposed amendments, as these revisions change the "NECESSITY, FUNCTION AND CONFORMITY" paragraph and the format of a definition to meet KRS Chapter 13A considerations, update the reference to the current Code of Federal Regulations, and incorporate revisions, as published in the Federal Register, January 8, 1998, which update reference material.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no cost effected from this revision.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these revisions will increase or decrease costs. There will be no effect on competition.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations incorporate, by reference, federal regulations published in the Federal Register, change the "NECESSITY, FUNCTION AND CONFORMITY" paragraph and the format of a definition to meet KRS Chapter 13A considerations, and update the reference to the current Code of Federal Regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These

proposed amendments will enhance worker safety throughout Kentucky.

(b) State whether detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments change the "NECESSITY, FUNCTION AND CONFORMITY" paragraph and the format of a definition to meet KRS Chapter 13A considerations, update the reference to the current Code of Federal Regulations, and incorporate revisions, as published in the Federal Register, January 8, 1998, which update reference material.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions to the previously adopted regulation, 29 CFR 1910.252 "General Requirements," as published in the Federal Register, Volume 63, Number 5, January 8, 1998.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government that employ workers involved in welding operations.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees involved in welding operations.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

### STATEMENT OF EMERGENCY 803 KAR 2:317E

This emergency administrative regulation changes the "NECESSITY, FUNCTION AND CONFORMITY" paragraph and, in Section 1(8), a definition to meet KRS Chapter 13A considerations, in Section 2(1)(a) updates the reference to the Code of Federal Regu-

lations, and in Section 2(1)(b) incorporates, by reference, a publication in the Federal Register, dated January 8, 1998, which revises references. It is necessary to promulgate this emergency administrative regulation to comply with the federal mandate, 29 CFR 1953.23, requiring implementation of the federal standard, or one (1) more stringent, within six (6) months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler, July 2, 1998.

PAUL E. PATTON, Governor  
JOE NORSWORTHY, Chairman

**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and**  
**Health Education and Training**

**803 KAR 2:317E. Special industries.**

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910  
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910

EFFECTIVE: July 2, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may [Express authority to] incorporate by reference established federal standards and national consensus standards is also given to the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions Applicable to this Part. (1) "Act" means KRS Chapter 338.

(2) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(3) "Employee" means any person employed except those employees excluded in KRS 338.021.

(4) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(5) "Established federal standard" means any operative occupational safety and health standard established by any agency of the United States Government.

(6) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(7) "Standard" means a standard which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment. "Standard" has the same meaning as and includes the words "regulation" and "rule".

(8) "U.S. Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or the U.S. Department of Labor. [An employer, required under these standards to report information to the U.S. Department of Labor, or any subsidiary thereof, shall instead report such information to the Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601.]

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR Part 1910.261-275, Subpart R, "Special Industries", revised as of July 1, 1997 [1995], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(b) The revisions to 29 CFR 1910.261, "Pulp, Paper, and Paperboard Mills", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference. [61, Number 46, March 7, 1996, are incorporated by reference.]

(c) The revisions to 29 CFR 1910.262, "Textiles", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(d) The revisions to 29 CFR 1910.263, "Bakery Equipment", as published in the Federal Register, Volume 61, Number 46, March 12, 1996, are incorporated by reference.

(e) The revisions to 29 CFR 1910.265, "Sawmills", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(f) The revisions to 29 CFR 1910.266, "Logging Operations", as published in the Federal Register, Volume 60, Number 174, September 8, 1995, are incorporated by reference.

(g) The revisions to 29 CFR 1910.266, "Logging Operations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(h) The revisions to 29 CFR 1910.268, "Telecommunications", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(i) The revisions to 29 CFR 1910.272, "Grain Handling Facilities", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(j) The revisions to 29 CFR 1910.272, "Grain Handling Facilities", as published in the Federal Register, Volume 61, Number 47, March 8, 1996, are incorporated by reference.

(k) The removal of 29 CFR 1910.274, "Sources of Standards Operations", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(l) The removal of 29 CFR 1910.275, "Standards Organization", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.]

(2) This material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman  
KEMBRA SEXTON TAYLOR, Attorney  
APPROVED BY AGENCY: July 23, 1998  
FILED WITH LRC: July 2, 1998 at 8 a.m.

**REGULATORY IMPACT ANALYSIS**

Agency Contact: Kembra S. Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers in general industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of these proposed amendments, as these revisions change the "NECESSITY, FUNCTION AND CONFORMITY" paragraph and the format of a definition to meet KRS Chapter 13A considerations, update the reference to the current Code of Federal Regulations, and incorporate revisions, as published in the Federal Register, January 8, 1998, which update reference material.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no cost effected from this revision.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these revisions will increase or decrease costs. There will be no affect on competition.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations incorporate, by reference, federal regulations published in the Federal Register, change the "NECESSITY, FUNCTION AND CONFORMITY" paragraph and the format of a definition to meet KRS Chapter 13A considerations, and update the reference to the current Code of Federal Regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

(b) State whether detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments change the "NECESSITY, FUNCTION AND CONFORMITY" paragraph and the format of a definition to meet KRS Chapter 13A considerations, update the reference to the current Code of Federal Regulations, and incorporate revisions, as published in the Federal Register, January 8, 1998, which update reference material.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions to the previously adopted regulation, 29 CFR 1910.261 "Pulp, Paper, and Paperboard Mills," as published in the Federal Register, Volume 63, Number 5, January 8, 1998.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a

local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government that employ workers involved in manufacturing of pulp, paper, and paperboard.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees involved in manufacturing of pulp, paper, and paperboard.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

### STATEMENT OF EMERGENCY 803 KAR 2:320E

This emergency administrative regulation in Section 1(6)(c)-(y) incorporates, by reference, publications in the Federal Register, dated January 8, 1998 and April 23, 1998, which revise the respiratory protection provisions of the standards regulating asbestos, 13 carcinogens (4-Nitrobiphenyl, etc.), vinyl chloride, inorganic arsenic, lead, cadmium, benzene, coke oven emissions, cotton dust, 1,2-Dibromo-3-chloropropane, acrylonitrile, ethylene oxide, formaldehyde, methylenedianiline, 1,3-Butadiene, and methylene chloride. It is necessary to promulgate this emergency administrative regulation to comply with the federal mandate, 29 CFR 1953.23, requiring implementation of the federal standard, or one (1) more stringent, within six (6) months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler, July 13, 1998.

PAUL E. PATTON, Governor  
JOE NORSWORTHY, Chairman

### LABOR CABINET Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training

#### 803 KAR 2:320E. Air contaminants.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910.1000-1500  
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1910.1000-1500

EFFECTIVE: July 13, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may incorporate by reference established federal standards and national consensus standards. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of general industry.

Section 1. Definitions. (1) Definitions applicable to this part:

(a) "Act" means KRS Chapter 338.

(b) "Assistant Secretary of Labor" means the Secretary of Labor, Commonwealth of Kentucky.

(c) "Employee" means any person employed except those employees excluded in KRS 338.021.

(d) "Employer" means any entity for whom a person is employed except those employers excluded in KRS 338.021.

(e) "Established federal standard" means any operative occupational safety and health standard established by any agency of the



United States Government.

(f) "National consensus standard" means any occupational safety and health standard or modification thereof which has been adopted and promulgated by a nationally recognized standards-producing organization.

(g) "Standard" means the same as regulation or federal rule which requires conditions or the adoption or use of one (1) or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe and healthful employment.

(h) "U.S. Department of Labor" means Kentucky Labor Cabinet, U.S. 127 South, Frankfort, Kentucky 40601, or U.S. Department of Labor.

(2) Definitions for Section 2 of this administrative regulation.

(a) "Absolute filter" means a filter capable of retaining 99.97 percent of a mono disperse aerosol of three-tenths (0.3)  $\mu$  particles.

(b) "Authorized employee" means an employee whose duties require him to be in the regulated area and who has been specifically assigned by the employer.

(c) "Clean change room" means a room where employees put on clean clothing and/or protective equipment in an environment free of 4,4'-Methylene bis (2-chloroaniline). The clean change room shall be contiguous to and have an entry from a shower room, when the shower room facilities are otherwise required in this section.

(d) "Closed system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) where containment prevents the release of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas, or the external environment.

(e) "Decontamination" means the inactivation of 4,4'-Methylene bis (2-chloroaniline) or its safe disposal.

(f) "Director" means the Director, National Institute for Occupational Safety and Health, or any person directed by him or the Secretary or Health, Education and Welfare to act for the Director.

(g) "Disposal" means the safe removal of 4,4'-Methylene bis (2-chloroaniline) from the work environment.

(h) "Emergency" means an unforeseen circumstance or set of circumstances resulting in the release of 4,4'-Methylene bis (2-chloroaniline) which may result in exposure to or contact with 4,4'-Methylene bis (2-chloroaniline).

(i) "External environment" means any environment external to regulated and nonregulated areas.

(j) "Isolated system" means a fully enclosed structure other than the vessel=I of containment, of 4,4'-Methylene bis (2-chloroaniline), which is impervious to the passage of entry of 4,4'-Methylene bis (2-chloroaniline), and which would prevent the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, or the external environment, should leakage or spillage from the vessel of containment occur.

(k) "Laboratory type hood" means a device enclosed on three sides and the top and bottom designed and maintained so as to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; designed, constructed, and maintained in such a way that an operation involving 4,4'-Methylene bis (2-chloroaniline) within the hood does not require the insertion of any portion of any employee's body other than his hands and arms.

(l) "Nonregulated area" means any area under the control of the employer where entry and exit is neither restricted no controlled.

(m) "Open-vessel system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas or the external environment.

(n) "Protective clothing" means clothing designed to protect an employee against contact with or exposure to 4,4'-Methylene bis (2-chloroaniline).

(o) "Regulated area" means an area where entry and exit is restricted and controlled.

(3) Definitions for Section 5 of this administrative regulation.

(a) "Area director" means Director, Division of Occupational Safety and Health, Kentucky Labor Cabinet.

(b) "Assistant secretary" means Secretary of Labor, Kentucky Labor Cabinet.

(c) "U.S. Department of Labor" means Kentucky Labor Cabinet.

Section 2. 4,4'-Methylene bis (2-Chloroaniline). (1) Scope and

application.

(a) This section applies to any area in which, 4,4'-Methylene bis (2-chloroaniline), Chemical Abstracts Service Registry Number 101144 is manufactured, processed, repackaged, released, handled, or stored, but shall not apply to trans-shipment in sealed containers, except for the labeling requirements under subsection (5)(b), (c), and (d) of this section.

(b) This section shall not apply to solid or liquid mixtures containing less than 1.0 (one) percent by weight of 4,4'-Methylene bis (2-chloroaniline).

(2) Requirements for areas containing 4,4'-Methylene bis (2-chloroaniline). A regulated area shall be established by an employer where 4,4'-Methylene bis (2-chloroaniline) is manufactured, processed, used, repackaged, released, handled, and stored. All such areas shall be controlled in accordance with the requirements for the following category or categories describing the operations involved:

(a) Isolated systems. Employees working with 4,4'-Methylene bis (2-chloroaniline) within an isolated system such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(b) Closed system operation. Within regulated areas where 4,4'-Methylene bis (2-chloroaniline) is stored in sealed container, or contained in a closed system including piping systems, with any sample ports or openings closed while 4,4'-Methylene bis (2-chloroaniline) is contained within:

1. Access shall be restricted to authorized employees only;

2. Employees shall be required to wash hands, forearms, face and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(c) Open vessel system operations. Open vessel system operations as defined in Section 1(1)(m) of this administrative regulation are prohibited.

(d) Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system. In operations involving "laboratory type hood", or in locations where 4,4'-Methylene bis (2-chloroaniline) is contained in an otherwise "closed system", but is transferred, charge, or discharged into other normally closed containers, the provisions of this subparagraph shall apply.

1. Access shall be restricted to authorized employees only;

2. Each operation shall be provided with continuous local exhaust ventilation so that air movement is always from ordinary work areas to the operation. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated. Clean make-up air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

3. Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers and gloves prior to entering the regulated area.

4. Employees engaged in 4,4'-Methylene bis (2-chloroaniline) handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with 1910.134. A respirator affording higher level or protection may be substituted.

5. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in imperious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under subsection (5)(b), (c), and (d) of this section.

6. Employees shall be required to wash hands, forearms, face and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

7. Employees shall be required to shower after the last exit of the day.

8. Drinking fountains are prohibited in the regulated area.

(e) Maintenance and decontamination activities. In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with 4,4'-Methylene bis (2-chloroaniline) could result, each authorized employee entering that area shall:

1. Be provided with and required to wear clean, impervious garments, including gloves, boots and continuous-air supplied hood in



accordance with 1910.134;

2. Be decontaminated before removing the protective garments and hood;

3. Be required to shower upon removing the protective garments and hood.

(f) Laboratory activities. The requirements of this subparagraph shall apply to research and quality control activities involving the use of 4,4'-Methylene bis (2-chloroaniline).

1. Mechanical pipetting aids shall be used for all pipetting procedures.

2. Experiments, procedures and equipment which could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

3. Surfaces on which 4,4'-Methylene bis (2-chloroaniline) is handled shall be protected from contamination.

4. Contaminated wastes and animal carcasses shall be collected in impervious containers which are closed and decontaminated prior to removal from the work area. Such wastes and carcasses shall be incinerated in such a manner that no carcinogenic products are released.

5. All other forms of 4,4'-Methylene bis (2-chloroaniline) shall be inactivated prior to disposal.

6. Employees engaged in animal support activities shall be:

a. Provided with, and required to wear, a complete protective clothing change, clean each day, including coveralls or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices; and

b. Prior to each exit from a regulated area employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified as required under subsection (5)(b), (c), and (d) of this section.

c. Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities; and

d. Required to shower after the last exit of the day.

7. Employees, other than those engaged in animal support activities, each day shall be:

a. Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat.

b. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified as required under paragraphs (e)2, 3, and 4 of this subsection.

c. Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities.

8. Air pressure in laboratory areas and animal rooms where 4,4'-Methylene bis (2-chloroaniline) is handled and bioassay studies are performed shall be negative in relation to the pressure in surrounding area. Exhaust air shall not be discharged to regulated areas, non-regulated areas or the external environment unless decontaminated.

9. There shall be no connection between regulated areas and any other areas through the ventilation system.

10. A current inventory of 4,4'-Methylene bis (2-chloroaniline) shall be maintained.

11. Ventilated apparatus such as laboratory type hoods, shall be tested at least semi-annually or immediately after ventilation modification of maintenance operations, by personnel fully qualified to certify correct containment and operation.

(g) Premixed solutions. Where 4,4'-Methylene bis (2-chloroaniline) is present only in a single solution at a temperature not exceeding 120 degrees Celsius, the establishment of a regulated area is not required; however,

1. Only authorized employees shall be permitted to handle such materials;

2. Each day employees shall be provided with and required to wear a clean change of protective clothing (smocks, coveralls, or long-sleeved shirts and pants), gloves, and other protective garments and

equipment necessary to prevent contact with the solution in the process used;

3. Employees shall be required to remove and leave protective clothing and equipment when leaving the work area at the end of the work day or at any time solution is spilled on such clothing or equipment. Used clothing and equipment shall be placed in impervious containers for purposes of decontamination or disposal. The contents of such impervious containers shall be identified, as required under paragraphs (e)2, 3, and 4 of this section.

4. Employees shall be required to wash hand and face after removing such clothing and equipment and before engaging in other activities.

5. Employees assigned to work covered by the subparagraph shall be deemed to be working in regulated areas for the purposes of subsection (4)(a), (b), (c)1 and 2, and (d)3 and 4, 5, 6, and 7 of this section;

6. Work areas where solution may be spilled shall be:

a. Covered daily or after any spill with a clean covering;

b. Cleaned thoroughly daily and after any spill.

(3) General regulated area requirements.

(a) Employee identification. A daily roster of employees entering regulated areas shall be established and maintained. The rosters or a summary of the rosters shall be retained for a period of twenty (20) years. The rosters and/or summaries shall be provided upon request to authorized representatives of the assistant secretary and the director. In the event that the employer ceases business without a successor, rosters shall be forwarded by registered mail to the director.

(b) Emergencies. In an emergency, immediate measures including, but not limited to the requirements of subparagraphs 1, 2, 3, 4, and 5 of this paragraph shall be implemented.

1. The potentially affected area shall be evacuated as soon as the emergency has been determined.

2. Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

3. Special medical surveillance by a physician shall be instituted within twenty-four (24) hours for employees present in the potentially affected area at the time of the emergency. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with subsection (6)(b) of this section.

4. Where an employee has a known contact with 4,4'-Methylene bis (2-chloroaniline) such employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

5. An incident report on the emergency shall be reported as provided in subsection (6)(b) of this section.

(c) Hygiene facilities and practices.

1. Storage or consumption of food, storage or use of containers of beverages, storage or application of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of such products, are prohibited in regulated areas.

2. Where employees are required by this section to wash, washing facilities shall be provided in accordance with 1910.141.

3. Where employees are required by this section to shower, facilities shall be provided in accordance with 1910.141(d)(3).

4. Where employees wear protective clothing and equipment, clean change rooms shall be provided, in accordance with 1910.141(e), for the number of such employees required to change clothes.

5. If toilets are located in regulated areas, the toilets shall be in a separate room.

(d) Contamination control.

1. Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas. Local exhaust ventilation may be used to satisfy this requirement. Clean make-up air in equal volume shall replace air removed.

2. Any equipment, material, or other item taken or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

3. Decontamination procedures shall be established and implemented to remove 4,4'-Methylene bis (2-chloroaniline) from the surface of materials, equipment and the decontamination facility.

4. Dry sweeping and dry mopping are prohibited.

(4) Signs, information and training.

(a) Signs.

1. Entrance to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT  
Authorized Personnel Only

2. Entrances to regulated areas containing operations covered in subsection (3)(e) of this section shall be posted with signs bearing the legend:

Cancer-Suspect Agent Exposed  
In this Area  
Impervious Suit Including Gloves,  
Boots, and Air-Supplied Hood  
Required At All Times  
Authorized Personnel Only

3. Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that must be followed in entering and leaving a regulated area.

(b) Container contents identification.

1. Containers of 4,4'-Methylene bis (2-chloroaniline) and containers required under subsection (2)(d)5 and (f)7b, and (f)7b, and (g)3 of this section which are accessible only to, and handled only by authorized employees, or by other employees trained in accordance with paragraph (e) of this subsection, may have contents identification limited to a generic or proprietary name, or other proprietary identification, or the carcinogen and percent.

2. Containers of 4,4'-Methylene bis (2-chloroaniline) and containers required under subsection (2)(d)5, (f)7b, and (f)7b, and (g)3 of this section which are accessible to, or handled by employees other than authorized employees or employees trained in accordance with subparagraph of this paragraph shall have contents identification which includes the full chemical name and Chemical Abstracts Service Registry number as listed in subsection (1)(a) of this section.

3. Containers shall have the warning words "CANCER-SUSPECT AGENT" displayed immediately under or adjacent to the contents identification.

4. Containers which have 4,4'-Methylene bis (2-chloroaniline) contents with corrosive or irritating properties shall have label statements warning of such hazards, noting, if appropriate, particularly sensitive of affected portions of the body.

(c) Lettering. Lettering on signs and instructions required by paragraph (a) of this subsection shall be a minimum letter height of two (2) inches. Labels on containers required under this section shall not be less than one-half (1/2) the size of the largest lettering on the package, and not less than eight (8) point type in any instance; provided that no such required lettering need be more than one (1) inch in height.

(d) Prohibited statements. No statement shall appear on or near any required sign, label, or instruction which contradicts or detracts from the effect of any required warning, information or instruction.

(e) Training and indoctrination.

1. Each employee prior to being authorized to enter regulated area, shall receive a training and indoctrination program including, but not necessarily limited to:

- The nature of the carcinogenic hazards of 4,4'-Methylene bis (2-chloroaniline), including local and systemic toxicity;
- The specific nature of the operation involving 4,4'-Methylene bis (2-chloroaniline) which could result in exposure;
- The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;
- The purpose for and application for decontamination practices and purposes;
- The purpose for and significance of emergency practices and procedures;
- The employees specific role in emergency procedures;
- Specific information to aid the employee in recognition and evaluation of conditions and situations which may result in the release of 4,4'-Methylene bis (2-chloroaniline);
- The purpose for and application of specific first-aid procedures and practices.

(i) A review of this section at the employees first training and indoctrination program and annually thereafter.

(ii) Specific emergency procedures shall be prescribed, and posted, and employees shall be familiarized with their terms, and rehearsed in their application.

(iii) All materials relating to the program shall be provided upon request to authorized representatives of assistant secretary and the director.

(5) Reports.

(a) Operations. Not later than March 1, 1974, the information required in subparagraphs 1, 2, 3, and 4 of this paragraph shall be reported in writing to the nearest OSHA Area director. Any changes in such information shall be similarly reported in writing within fifteen (15) calendar days of such change.

1. A brief description and inplant location of the area(s) regulated and the address of each regulated area:

2. The name(s) and other identifying information as to the presence of 4,4'-Methylene bis (2-chloroaniline) in each regulated area.

3. The number of employees in each regulated area, during normal operations including maintenance activities; and

4. The manner in which 4,4'-Methylene bis (2-chloroaniline) is present in each regulated area; e.g., whether it is manufactured, processed, used, repackaged, release, stored, or otherwise handled.

(b) Incidents. Incidents which result in the release of 4,4'-Methylene bis (2-chloroaniline) into any area where employees may be potentially exposed shall be reported in accordance with this subparagraph.

1. A report of the occurrence of the incident and the facts obtainable at that time including a report on any medical treatment of affected employees shall be made within twenty-four (24) hours to the nearest OSHA Area Director.

2. A written report shall be filed with the nearest OSHA Area Director within fifteen (15) calendar days thereafter and shall include:

a. A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure:

b. A description of the area involved, and the extent of known and possible employee and area contamination; and

c. A report of any medical treatment of affected employees and any medical surveillance program implemented; and

d. An analysis of the circumstances to be taken, with specific completion dates, to avoid further similar release.

(6) Medical surveillance. At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(a) Examinations.

1. Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

2. Authorized employees shall be provided periodic physical examination, not less often than annually, following the preassignment examination.

3. In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, those undergoing treatment with steroids of cytotoxic agents, pregnancy and cigarette smoking.

(b) Records.

1. Employers or employees examined pursuant to this paragraph shall cause to be maintained complete and accurate record of all such medical examinations. Records shall be maintained for the duration of the employee's employment. Upon termination of the employee's employment, including retirement or death, or in the event that the employer ceases business without a successor, records, or notarized true copies thereof, shall be forwarded by registered mail to the director.

2. Records required by this paragraph shall be provided upon request to authorized representatives of the assistant secretary or the director: and upon request of an employee or former employee, to a physician designated by the employee or to a new employer.

3. Any physician who conducts a medical examination required by this paragraph shall furnish to the employer a statement of the employees suitability for employment in the specific exposure.

Section 3. Laboratory Activities. (1) The requirements of this sub-

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

section shall apply to research and quality control activities involving the use of chemicals covered by 1910.1003-.1016.

(a) Mechanical pipetting aids shall be used for all pipetting procedures.

(b) Experiments, procedures and equipment which could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

(c) Surfaces on which chemicals covered by .1003-.1016 are handled shall be protected from contamination.

(d) Contaminated wastes and animal carcasses shall be collected in impervious containers which are closed and decontaminated prior to removal from the work area. Such wastes and carcasses shall be incinerated in such a manner that no carcinogenic products are released.

(e) All other forms of chemicals covered by .1003-.1016 shall be inactivated prior to disposal.

(f) Laboratory vacuum systems shall be protected with high-efficiency scrubbers or with disposal absolute filters.

(g) Employees engaged in animal support activities shall be:

1. Provided with and required to wear, a complete protective clothing change, clean each day, including coveralls, or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices; and

2. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified as required under subsection (5)(b), (c), and (d) of this section.

3. Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit, and before engaging in other activities; and

4. Required to shower after the last exit of the day.

(h) Employees, other than those engaged only in animal support activities, each day shall be:

1. Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suite, or fully buttoned laboratory coat;

2. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for purposes of decontamination or disposal. The contents of such impervious containers shall be identified under subsection (5)(b), (c), and (d) of this section.

3. Required to wash hands, forearms, face and neck upon each exit from the regulated area close to the point of exit, and before engaging in other activities.

(i) Air pressure in laboratory areas and animal rooms where chemicals covered by .1003-.1016 are handled and bioassay studies are performed shall be negative in relation to the pressure in surrounding areas. Exhaust air shall not be discharged to regulated areas, nonregulated areas or the external environment unless decontaminated.

(j) There shall be no connection between regulated areas and any other areas through the ventilation system.

(k) A current inventory of chemicals covered by .1003-.1016 shall be maintained.

(l) Ventilated apparatus such as laboratory-type hoods, shall be tested at least semi-annually or immediately after ventilation modification or maintenance operations, by personnel fully qualified to certify correct containment and operation.

Section 4. Access to Exposure or Medical Records. (1) The language relating to the access to exposure or medical records in subsection (2) of this section shall apply in lieu of 29 CFR 1910.1020(e)(1)(i);

(2) 29 CFR 1910.1020(e)(1)(i) is amended to read: "Whenever an employee or designated representative requests access to an exposure or medical record, the employer shall assure that access is provided in a reasonable time, place, and manner, but not longer than fifteen (15) days after the request for access is made unless sufficient reason is given why such a time is unreasonable or impractical."

(3) The language relating to the access to exposure or medical

records in subsection (4) of this section shall apply in lieu of 29 CFR 1910.1020(e)(1)(iii);

(4) 29 CFR 1910.1020(e)(1)(iii) is amended to read: "Whenever an employee or designated representative requests a copy of a record, the employer shall, except as specified in (v) of this section, within the period of time previously specified assure that either:"

Section 5. The language relating to gloves in paragraph (2) of this subsection shall apply in lieu of 29 CFR 1910.1030(d)(3)(ix);

(2) Gloves shall be worn when it can be reasonably anticipated that the employees may have hand contact with blood, other potentially infectious materials, mucous membranes, and nonintact skin when performing vascular access procedures and when handling or touching contaminated items or surfaces.

Section 6. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) The material in subparagraph 1 through 2 of this paragraph, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1997, is incorporated by reference:

1. 29 CFR 1910.1000 to 29 CFR 1910.1030(d)(3)(viii); and

2. 29 CFR 1910.1030(d)(3)(x) through 29 CFR 1910.1500.

(b) The revisions to 29 CFR 1910.1000, "Air Contaminants", as published in the Federal Register, Volume 62, Number 149, August 4, 1997, are incorporated by reference.

(c) The revisions to 29 CFR 1910.1001, "Asbestos", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(d) The revisions to 29 CFR 1910.1003, "13 Carcinogens (4-Nitrobiphenyl, etc.)", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(e) The revisions to 29 CFR 1910.1003, "13 Carcinogens (4-Nitrobiphenyl, etc.)", as published in the Federal Register, Volume 63, Number 78, April 23, 1998, are incorporated by reference.

(f) The revisions to 29 CFR 1910.1017, "Vinyl Chloride", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(g) The revisions to 29 CFR 1910.1018, "Inorganic Arsenic", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(h) The revisions to 29 CFR 1910.1025, "Lead", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(i) The revisions to 29 CFR 1910.1025, "Lead", as published in the Federal Register, Volume 63, Number 78, April 23, 1998, are incorporated by reference.

(j) The revisions to 29 CFR 1910.1027, "Cadmium", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(k) The revisions to 29 CFR 1910.1028, "Benzene", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(l) The revisions to 29 CFR 1910.1028, "Benzene", as published in the Federal Register, Volume 63, Number 78, April 23, 1998, are incorporated by reference.

(m) The revisions to 29 CFR 1910.1029, "Coke Oven Emissions", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(n) The revisions to 29 CFR 1910.1043, "Cotton Dust", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(o) The revisions to 29 CFR 1910.1044, "1,2-Dibromo-3-chloropropane", published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(p) The revisions to 29 CFR 1910.1045, "Acrylonitrile", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(q) The revisions to 29 CFR 1910.1045, "Acrylonitrile", as published in the Federal Register, Volume 63, Number 78, April 23, 1998, are incorporated by reference.

(r) The revisions to 29 CFR 1910.1047, "Ethylene Oxide", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(s) The revisions to 29 CFR 1910.1048, "Formaldehyde", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(t) The revisions to 29 CFR 1910.1048, "Formaldehyde", as published in the Federal Register, Volume 63, Number 78, April 23, 1998, are incorporated by reference.

(u) The revisions to 29 CFR 1910.1050, "Methylenedianiline", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(v) The revisions to 29 CFR 1910.1050, "Methylenedianiline", as published in the Federal Register, Volume 63, Number 78, April 23, 1998, are incorporated by reference.

(w) The revisions to 29 CFR 1910.1051, "Butadiene", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(x) The revisions to 29 CFR 1910.1052, "Methylene Chloride", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(y) The revisions to 29 CFR 1910.1052, "Methylene Chloride", as published in the Federal Register, Volume 63, Number 78, April 23, 1998, are incorporated by reference.

(2) The language relating to the access of exposure and medical records in Section 4(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.1020(e)(1)(i).

(3) The language relating to the access of exposure and medical records in Section 4(4) of this administrative regulation shall apply in lieu of 29 CFR 1910.1020(e)(1)(iii).

(4) The language relating to gloves in Section 5(2) of this administrative regulation shall apply in lieu of 29 CFR 1910.1030(d)(3)(ix).

(5) This material may be inspected, copied or obtained at Kentucky Labor Cabinet, Division of Education and Training, 1047 U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman

KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: June 23, 1998

FILED WITH LRC: June 13, 1998 at 10 a.m.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers within the jurisdiction of the Kentucky Occupational Safety and Health Program.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of these proposed amendments, as these revisions, as published in the Federal Register, January 8, 1998 and April 23, 1998, delete requirements for fit-testing, respirator selection, and respirator use (as they are duplicative) in the standards regulating asbestos, 13 carcinogens (4-Nitrobiphenyl, etc.), vinyl chloride, inorganic arsenic, lead, cadmium, benzene, coke oven emissions, cotton dust, 1,2-Dibromo-3-chloropropane, acrylonitrile, ethylene oxide, formaldehyde, methylenedianiline, 1,3-Butadiene, and methylene chloride.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no cost effected from this revision.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these revisions will increase or decrease costs. There will be no effect on competition.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no

reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations incorporate, by reference, federal regulations as published in the Federal Register, January 8, 1998 and April 23, 1998, which delete requirements for fit-testing, respirator selection, and respirator use (as they are duplicative) in the standards regulating asbestos, 13 carcinogens (4-Nitrobiphenyl, etc.), vinyl chloride, inorganic arsenic, lead, cadmium, benzene, coke oven emissions, cotton dust, 1,2-Dibromo-3-chloropropane, acrylonitrile, ethylene oxide, formaldehyde, methylenedianiline, 1,3-Butadiene, and methylene chloride.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

(b) State whether detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments adopt federal regulations.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions to the previously adopted regulations on asbestos, 13 carcinogens (4-Nitrobiphenyl, etc.), vinyl chloride, inorganic arsenic, lead, cadmium, benzene, coke oven emissions, cotton dust, 1,2-Dibromo-3-chloropropane, acrylonitrile, ethylene oxide, formaldehyde, methylenedianiline, 1,3-Butadiene, and methylene chloride, as published in the Federal Register, January 8, 1998 and April 23, 1998.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government entities that work with asbestos, 13 carcinogens (4-Nitrobiphenyl, etc.), vinyl chloride, inorganic arsenic, lead, cadmium, benzene, coke oven emissions, cotton dust, 1,2-Dibromo-3-chloropropane, acrylonitrile, ethylene oxide, formaldehyde, methylenedianiline, 1,3-Butadiene, and methylene chloride.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees of local government who work with asbestos, 13 carcinogens (4-Nitrobiphenyl, etc.), vinyl chloride, inorganic arsenic, lead, cadmium, benzene, coke oven emissions, cotton dust, 1,2-Dibromo-3-chloropropane, acrylonitrile, ethylene oxide, formaldehyde, methylenedianiline, 1,3-Butadiene, and methylene chloride.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

### STATEMENT OF EMERGENCY 803 KAR 2:403E

This emergency administrative regulation in Section 1(8), changes a definition, in Section 2(1)(a) updates the reference to the Code of Federal Regulations, and in Section 2(1)(b) incorporates, by reference, a publication in the Federal Register, dated January 8, 1998, which revises references. It is necessary to promulgate this emergency administrative regulation to comply with the federal mandate, 29 CFR 1953.23, requiring implementation of the federal standard, or one (1) more stringent, within six (6) months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler, July 2, 1998.

PAUL E. PATTON, Governor  
JOE NORSWORTHY, Chairman

### LABOR CABINET Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training

**803 KAR 2:403E. Occupational health and environmental controls.**

RELATES TO: KRS 338.051, 338.061, 29 CFR 1926.50-.66

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1926.50-.66

EFFECTIVE: July 2, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may incorporate by reference established federal standards and national consensus standards. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. Definitions. As used in the material incorporated by

reference in Section 2 of this administrative regulation:

(1) "Area director" means Director, Division of Occupational Safety and Health, Kentucky Labor Cabinet;

(2) "Assistant secretary" means Secretary of Labor, Kentucky Labor Cabinet;

(3) "U.S. Department of Labor" means Kentucky Labor Cabinet or U.S. Department of Labor.

Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR Part 1926.50-.66, Subpart D, "Environmental Controls", revised as of July 1, 1997 [1995], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(b) Revisions to 29 CFR 1926.57, "Ventilation", as published in Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference. [Revisions to 29 CFR 1926.53, "Ionizing Radiation", as published in Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.]

(c) Revisions to 29 CFR 1926.60, "Methylenedianiline", as published in Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference. [Revisions to 29 CFR 1926.55, "Gases, Vapors, Fumes, Dusts, and Mists", as published in Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.]

(d) Revisions to 29 CFR 1926.62, "Lead", as published in Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference. [29 CFR 1926.55, Appendix, is revised as follows:

1. Revisions to 29 CFR 1926.55, Appendix A, "1970 American Conference of Governmental Industrial Hygienists' Threshold Limit Values", as published in Federal Register, Volume 61, Number 214, November 4, 1996, are incorporated by reference.

2. Revisions to 29 CFR 1926.55, Appendix A, "1970 American Conference of Governmental Industrial Hygienists' Threshold Limit Values", as published in Federal Register, Volume 62, Number 7, January 10, 1997, are incorporated by reference.

(e) Revisions to 29 CFR 1926.57, "Ventilation", as published in Federal Register, Volume 61, Number 46, March 7, 1996, are incorporated by reference.

(f) Revisions to 29 CFR 1926.59, "Hazard Communication", as published in Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

(g) 29 CFR 1926.60, "Methylenedianiline", is revised, as follows:

1. Revisions to Appendix A of 29 CFR 1926.60, as published in Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

2. Revisions to Appendix B of 29 CFR 1926.60, as published in Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

3. Revisions to Appendix C of 29 CFR 1926.60, as published in Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

4. Revisions to Appendix D of 29 CFR 1926.60, as published in Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

5. Revisions to Appendix E of 29 CFR 1926.60, as published in Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.

(h) Revisions to 29 CFR 1926.61, "Retention of DOT Markings, Placards and Labels", as published in Federal Register, Volume 61, Number 120, June 20, 1996, are incorporated by reference.]

(2) This material may be inspected, copied, or obtained at Kentucky Labor Cabinet, Division of Education and Training, 1047 U.S. 127 South, Suite 4, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday.

JOE NORSWORTHY, Chairman  
KEMBRA SEXTON TAYLOR, Attorney  
APPROVED BY AGENCY: June 23, 1998  
FILED WITH LRC: July 2, 1998 at 8 a.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra S. Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers in the construction industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of these proposed amendments, as these revisions change a definition, update the reference to the current Code of Federal Regulations, and incorporate revisions, as published in the Federal Register, January 8, 1998, which update reference material and delete requirements for fit-testing, respirator selection, and respirator use for methylenedianiline and lead (as they are duplicative).

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no cost effected from this revision.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these revisions will increase or decrease costs. There will be no affect on competition.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations incorporate, by reference, federal regulations published in the Federal Register, change a definition, and update the reference to the current Code of Federal Regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

(b) State whether detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

## FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments meet change a definition, update the reference to the current Code of Federal Regulations, and incorporate revisions, as published in the Federal Register, January 8, 1998, which update reference material.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions to the previously adopted regulation, 29 CFR 1926.57 "Ventilation," 29 CFR 1926.60, "Methylenedianiline," and 29 CFR 1926.62, "Lead," as published in the Federal Register, Volume 63, Number 5, January 8, 1998.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

## FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government that employ workers involved in construction work using abrasive blasting or where respiratory protection is used to lower worker exposure to methylenedianiline or lead.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees involved in construction work using abrasive blasting or where respiratory protection is used to lower worker exposure to methylenedianiline or lead.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

## STATEMENT OF EMERGENCY 803 KAR 2:404E

This emergency administrative regulation in Section 1(8), changes a definition, in Section 2(1)(a) updates the reference to the Code of Federal Regulations, in Section 2(1)(b) incorporates, by reference, a publication in the Federal Register, dated January 8, 1998, which refers the reader to 29 CFR 1910.134, and makes changes in the "Necessity, Function, and Conformity" paragraph to meet KRS Chapter 13A considerations. It is necessary to promulgate this emergency administrative regulation to comply with the federal mandate, 29 CFR 1953.23, requiring implementation of the federal standard, or one (1) more stringent, within six (6) months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler, July 2, 1998.

PAUL E PATTON, Governor  
JOE NORSWORTHY, Chairman



# VOLUME 25, NUMBER 2 – AUGUST 1, 1998

## LABOR CABINET Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training

### 803 KAR 2:404E. Personal protective and lifesaving equipment.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1910

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1926

EFFECTIVE: July 2, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051 and 338.061 authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may [Express authority to] incorporate by reference established federal standards and national consensus standards is also given to

the board. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR 1926.95-1926.107, Subpart E, "Personal Protective and Lifesaving Equipment", published by the Office of the Federal Register, National Archives and Records Services, General Services Administration, revised as of July 1, 1997, is incorporated by reference.

(b) The revisions to 29 CFR 1926.103, "Respiratory Protection", as published in the Federal Register, Volume 63, Number 5, January 8, 1998, is incorporated by reference. (Table E-4 Respirator Protection Factors: (1) The Table E-4 Respirator Protection factors found in Section 2 shall apply in lieu of Table E-4 found in 29 CFR 1926.103;

(2) Table E-4 Respiratory Protection Factors:

Respirator Protection Factors<sup>a</sup>

Type of Respirator	Permitted for Use in Oxygen-deficient Atmosphere	Permitted for Use in Immediately dangerous-to-life-or-health Atmosphere <sup>f</sup>	Respirator Protection Factor	
			Qualitative Test	Quantitative Test
Particulate-filter, quarter-mask or half-mask face-piece <sup>b,c</sup>	No	No	10	As measured on each person with maximum of 100.
Vapor- or gas-removing, quarter-mask or half-mask facepiece <sup>c</sup>	No	No	10, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.	As measured on each person with maximum of 100, or maximum use limit of cartridge or canister for vapor or gas, <sup>h,i</sup> whichever is less.
Combination particulate-filter and vapor- or gas-removing, quarter-mask or half-mask facepiece <sup>b,c</sup>	No	No	10, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.	As measured on each person with maximum of 100, or maximum use limit of cartridge or canister for vapor or gas, <sup>h,i</sup> whichever is less.
Particulate-filter, full facepiece <sup>b</sup>	No	No	100	As measured on each person with maximum of 100 if dust, fume or mist filter is used, or maximum of 1000 if high-efficiency filter is used.
Vapor- or gas-removing, full facepiece	No	No	100, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.	As measured on each person with maximum of 1000, or maximum use limit of cartridge or canister for vapor or gas, <sup>h,i</sup> whichever is less.
Combination particulate-filter and vapor- or gas-removing, full facepiece <sup>b</sup>	No	No	100, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.	As measured on each person with maximum of 100 if dust, fume or mist filter is used and maximum of 1000 if high efficiency filter is used, or maximum use limit of cartridge or canister for vapor or gas, whichever is less.
Powered particu-	No	No	N/A	N/A



VOLUME 25, NUMBER 2 – AUGUST 1, 1998

late-filter, any respiratory-inlet covering <sup>b,c,d</sup>		(yes, if escape provisions are provided <sup>d</sup> )	No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 100 if dust, fume, or mist filter is used and 3000 if high-efficiency filter is used.	
Powered-vapor-or gas-removing, any respiratory-inlet covering <sup>b,c,d</sup>	No	No (yes, if escape provisions are provided <sup>d</sup> )	N/A	N/A No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 3000, or maximum use limit of cartridge or canister for vapor or gas <sup>h</sup> , whichever is less.
Powered combination-particulate-filter and vapor or gas-removing, any respiratory-inlet covering <sup>b,c,d</sup>	No	No (yes, if escape provisions are provided <sup>d</sup> )	N/A	N/A No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 100 if dust, fume, or mist filter is used and 3000 if high-efficiency filter is used, or maximum use limit of cartridge or canister for vapor or gas <sup>h</sup> , whichever is less.
Airline, demand; quarter-mask or half-mask facepiece, with or without escape provisions <sup>e,g</sup>	Yes <sup>f</sup>	No	10	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values.
Airline, demand; full facepiece, with or without escape provisions <sup>e</sup>	Yes <sup>f</sup>	No	100	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values.
Airline, continuous flow or pressure demand type; any facepiece, without escape provisions <sup>e</sup>	Yes <sup>f</sup>	No	N/A	N/A No tests are required due to positive-pressure operation of respirator. The protection factor provided by the respirator is limited to use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values.
Airline, continuous flow or pressure demand type; any facepiece, with escape provisions <sup>e,g</sup>	Yes <sup>g</sup>	Yes	N/A	N/A No tests are required due to positive-pressure operation of respirator. The maximum protection factors is 10000 plus <sup>h</sup> .
Airline, continuous flow, helmet, hood; suit without escape provisions	Yes <sup>f</sup>	No	N/A	N/A No tests are required due to positive-pressure operation of respirator. The protection factor provided by the respirator is limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values.
Airline, continuous flow, helmet, hood; or suit, with escape provisions <sup>g</sup>	Yes <sup>g</sup>	Yes	N/A	N/A No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 10000 plus <sup>h</sup> .
Hose mask, with or without blower, full facepiece	Yes <sup>f</sup>	No	10	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately-dangerous-to-life-or-health (IDLH) values.

# VOLUME 25, NUMBER 2 – AUGUST 1, 1998

Self-contained breathing apparatus; demand-type open-circuit or negative-pressure-type closed-circuit; quarter-mask or half-mask face-piece <sup>e</sup>	Yes <sup>f</sup>	No	10	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately dangerous-to-life-or-health (IDLH) values.
Self-contained breathing apparatus; demand-type open-circuit or negative-pressure-type closed-circuit; full face-piece or mouth-piece/nose clamp <sup>e</sup>	Yes <sup>f</sup> (Yes, if respirator is used for mine rescue and mine recovery operations.)	No (yes, if respirator is used for mine rescue and mine recovery operations.)	100	As measured on each person, but limited to the use of the respirator in concentrations of contaminants below the immediately dangerous-to-life-or-health (IDLH) values except when the respirator is used for mine rescue and mine recovery operations.
Self-contained breathing apparatus; pressure-demand-type open-circuit or positive-pressure-type closed-circuit; quarter-mask or half-mask facepiece; full facepiece, or mouth-piece/nose clamp <sup>e</sup>	Yes <sup>g</sup>	Yes	N/A No tests are required due to positive-pressure operation of respirator. The maximum protection factor is 10000 plus.	N/A
Combination respirators not listed:	The type and mode of operation having the lowest respirator protection factor shall be applied to the combination respirator.			

N/A means not applicable since a respirator-fitting test is not carried out.

<sup>a</sup>Respirator protection factor is a measure of the degree of protection provided by a respirator to a respirator wearer. Multiplying the permissible time-weighted average concentration or the permissible ceiling concentration, whichever is applicable, for a toxic substance, or the maximum permissible airborne concentration for a radionuclide, by a protection factor assigned to a respirator gives the maximum concentration of the hazardous substance for which the respirator can be used. Limitations of filters, cartridges, and canisters used in air-purifying respirators shall be considered in determining protection factors.

<sup>b</sup>When the respirator is used for protection against airborne particulate matter having a permissible time-weighted average concentration less than 0.05 milligram particulate matter per cubic meter of air or less than 2 million particles per cubic foot of air, or for protection against airborne radionuclide particulate matter, the respirator shall be equipped with a high-efficiency filter(s).

<sup>c</sup>If the air contaminant causes eye irritation, the wearer of a respirator equipped with a quarter-mask or half-mask facepiece or mouth-piece and nose clamp shall be permitted to use a protective goggle or to use a respirator equipped with a full facepiece.

<sup>d</sup>If the powered air-purifying respirator is equipped with a facepiece, the escape provision means that the wearer is able to breathe through the filter, cartridge, or canister and through the pump. If the powered air-purifying respirator is equipped with a helmet, hood, or suit, the escape provision shall be an auxiliary self-contained supply of respirable air.

<sup>e</sup>The escape provision shall be an auxiliary self-contained supply of respirable air.

<sup>f</sup>"Oxygen deficiency -- not immediately dangerous to life or health" -- an atmosphere having an oxygen concentration below the minimum legal requirement but above that which is immediately dangerous to life or health.

<sup>g</sup>"Oxygen deficiency -- immediately dangerous to life or health" -- an atmosphere which causes an oxygen partial pressure of 100 millimeters of mercury column or less in the freshly inspired air in the upper portion of the lungs which is saturated with water vapor.

<sup>h</sup>The protection factor measurement exceeds the limit of sensitivity of the test apparatus. Therefore, the respirator has been classified for use in atmospheres having unknown concentrations of contaminants.

<sup>i</sup>The service life of a vapor or gas removing cartridge or canister depends on the specific vapor or gas, the concentration of the vapor or gas in air, the temperature and humidity of the air, the type and quantity of the sorbent in the cartridge or canister, and the activity of the respirator wearer. Cartridges and canisters may provide only very short service lives for certain vapors and gases. Vapor/gas service life testing is recommended to ensure that cartridges and canisters provide adequate service lives. Reference should be made to published reports which give vapor/gas life data for cartridges and canisters.

<sup>j</sup>Vapor and gas removing respirators are not approved for contaminants that lack adequate warning properties of odor, irritation, or taste at concentrations in air at or above the permissible exposure limits.

NOTE: Respirator protection factors for air-purifying-type respirators equipped with a mouthpiece/nose clamp form of respiratory inlet covering are not given, since such respirators are approved only for escape purposes.

Section 2. Incorporation by Reference. (1) The material in paragraphs (a) and (b) of this subsection, published by the Office of the Federal Register, National Archives and Records Service, General Services Administration, revised as of July 1, 1995, is incorporated by reference:

(a) 29 CFR 1926.95 to 29 CFR 1926.103(b)(2), excluding Table E-4 -- Selection of Respirators;

(b) 29 CFR 1926.103(c) through 29 CFR 1926.107.

(2) "Table E-4 Respiratory Protection Factors", listing the types of respirators required for protection in dangerous atmospheres, found in Section 1(2) of this administrative regulation shall apply in lieu of "Table E-4 Selection of Respirators" found in 29 CFR 1926.103(b)(3).

(3) The removal of 29 CFR 1926.97, "Protective Clothing for Fire Brigades", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(4) The removal of 29 CFR 1926.98, "Respiratory Protection for

Fire Brigades", as published in the Federal Register, Volume 61, Number 120, June 20, 1996, is incorporated by reference.

(5) The revision to 29 CFR 1926.103, "Respiratory Protection", as published in the Federal Register, Volume 61, Number 46, March 7, 1996, is incorporated by reference.]

(2) [(6)] This material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601, during the hours of 8 a.m. - 4:30 p.m.(ET), Monday through Friday.

JOE NORSWORTHY, Chairman

KEMBRA SEXTON TAYLOR, Attorney

APPROVED BY AGENCY: June 23, 1998

FILED WITH LRC: July 2, 1998 at 8 a.m.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra S. Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers in the construction industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of these proposed amendments as these revisions update the reference to the current Code of Federal Regulations, incorporate revisions, as published in the Federal Register, January 8, 1998, which refer the reader to 29 CFR 1910.134, and make changes in the "Necessity, Function, and Conformity" paragraph to meet KRS Chapter 13A considerations.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no cost effected from this revision.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these revisions will increase or decrease costs. There will be no affect on competition.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations incorporate, by reference, federal regulations published in the Federal Register, change a definition, and update the reference to the current Code of Federal Regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

(b) State whether detrimental effect on environment and public

health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).

2. State compliance standards. These amendments update the reference to the current Code of Federal Regulations, incorporate revisions, as published in the Federal Register, January 8, 1998, which refer the reader to 29 CFR 1910.134, make changes in the "Necessity, Function, and Conformity" paragraph to meet KRS Chapter 13A considerations.

3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions to the previously adopted regulation, 29 CFR 1926.103 "Respiratory Protection," as published in the Federal Register, Volume 63, Number 5, January 8, 1998.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government that employ workers involved in construction work that use respiratory protection.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees who use respiratory protection.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

#### STATEMENT OF EMERGENCY 803 KAR 2:418E

This emergency administrative regulation amends the introduction to meet KRS Chapter 13A considerations, in Section 1(1)(a), updates the reference to the Code of Federal Regulations, and in Section 1(1)(b) incorporates, by reference, a publication in the Federal Register, dated January 8, 1998, which revises references in the federal standard. It is necessary to promulgate this emergency administrative regulation to comply with the federal mandate, 29

CFR 1953.23, requiring implementation of the federal standard, or one (1) more stringent, within six (6) months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler, July 2, 1998.

PAUL E. PATTON, Governor  
JOE NORSWORTHY, Chairman

**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and Health Education and Training**

**803 KAR 2:418. Underground construction, caisson's, cofferdams, and compressed air. [Adoption of 29 CFR Part 1926.800-.804.]**

RELATES TO: KRS 338.051, 338.061, 29 CFR 1926 [Chapter 338]

STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1926 [Chapter 13A]

EFFECTIVE: July 2, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) [and 338.061] authorize the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health [rules;] administrative regulations[;—and—standards]. KRS 338.061(2) provides that the board may [Express authority to] incorporate by reference established federal standards and national consensus standards [is also given to the board]. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction. [The standards are arranged in numerical order in order to facilitate reference to 29 CFR 1926.]

Section 1. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR 1926.800-.804 of the Code of Federal Regulations, revised as of July 1, 1997, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(b) The revisions to 29 CFR 1926.800, "Underground Construction," as published in the Federal Register, Volume 63, Number 5, January 8, 1998, are incorporated by reference.

(2) This material may be inspected and copied at the offices of the Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (ET), Monday through Friday. (The Occupational Safety and Health Standards Board hereby adopts Chapter 29, Part 1926.800-.804 of the Code of Federal Regulations, revised as of July 1, 1986, published by the Office of the Federal Register, National Archives and Records Services, General Services Administration. These standards are hereby incorporated by reference, as amended January 15, 1990, with the following additions, exceptions, and deletions:

(1) Revision of 29 CFR 1926.800, as published in the Federal Register, Volume 54, Number 105, June 2, 1989, is incorporated by reference.

(2) Revision of 29 CFR 1926.800, "(Amended)", as published in the Federal Register, Volume 58, Number 124, June 30, 1993, is incorporated by reference.

(3) Revision of 29 CFR 1926.803(j)(3), as published in the Federal Register, Volume 51, Number 133, July 11, 1986 is incorporated by reference.

Section 2. Public Notice. (1) In accordance with KRS 13A.224(3)(c), this material may be inspected and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601.

(2) Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.]

REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra S. Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers in the construction industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of these proposed amendments as these revisions make changes in the introductory paragraph to meet KRS Chapter 13A considerations, update the reference to the current Code of Federal Regulations and incorporate revisions, as published in the Federal Register, January 8, 1998, which revise references in one paragraph of the standard.

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no cost effected from this revision.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation:

2. Second and subsequent years: There are no additional factors regarding these revisions will increase or decrease costs. There will be no effect on competition.

(3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.

(a) Direct and indirect costs or savings:

1. First year:

2. Continuing costs or savings:

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.

(4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.

(b) Kentucky: Undetermined; no public comments were received.

(7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations incorporate, by reference, federal regulations published in the Federal Register, change the introductory paragraph to meet KRS Chapter 13A considerations, and update the reference to the current Code of Federal Regulations.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.

(b) State whether detrimental effect on environment and public health would result if not implemented:

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).
2. State compliance standards. These amendments make changes in the introductory paragraph to meet KRS Chapter 13A considerations, update the reference to the current Code of Federal Regulations and incorporate revisions, as published in the Federal Register, January 8, 1998, which revise references in one paragraph of the standard.
3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions to the previously adopted regulation, 29 CFR 1926.800, "Underground Construction," as published in the Federal Register, Volume 63, Number 5, January 8, 1998.
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulation.
5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government that employ workers involved in underground construction work.
3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees who work in underground construction.
4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

### STATEMENT OF EMERGENCY 803 KAR 2:425E

This emergency administrative regulation in the "NECESSITY, FUNCTION, AND CONFORMITY" paragraph makes changes to meet KRS Chapter 13A considerations, in Section 1(8) changes a definition, in Section 2(1)(a) updates the reference to the Code of Federal Regulations, and in Section 2(1)(b), (c) and (d) incorporates, by reference, a publications in the Federal Register, dated January 8, 1998 and April 23, 1998, which which delete requirements for fit-testing, respirator selection, and respirator use (as they are duplicative). It is necessary to promulgate this emergency administrative regulation to comply with the federal mandate, 29 CFR 1953.23, requiring implementation of the federal standard, or one (1) more stringent, within six (6) months of the date of promulgation of the new federal standard, and to keep the state program as effective as the federal program. This emergency administrative regulation shall be replaced by an ordinary administrative regulation. The "Notice of Intent to Promulgate Administrative Regulation" shall be filed with the Regulations Compiler, July 2, 1998.

PAUL E. PATTON, Governor  
JOE NORSWORTHY, Chairman

### LABOR CABINET Department of Workplace Standards Division of Occupational Safety and Health Compliance Division of Occupational Safety and Health Education and Training

#### 803 KAR 2:425E. Toxic and hazardous substances.

RELATES TO: KRS 338.051, 338.061, 29 CFR 1926  
STATUTORY AUTHORITY: KRS 338.051(3), 338.061, 29 CFR 1926

EFFECTIVE: July 2, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) authorizes the Kentucky Occupational Safety and Health Standards Board to adopt and promulgate occupational safety and health administrative regulations. KRS 338.061(2) provides that the board may incorporate by reference established federal standards and national consensus standards. The following administrative regulation contains those standards to be enforced by the Division of Occupational Safety and Health Compliance in the area of construction.

Section 1. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) 29 CFR 1926.1100-.1152 [1148] revised as of July 1, 1997 [1996], published by the Office of the Federal Register, National Archives and Records Services, General Services Administration.

(b) The amendment to 29 CFR 1926.1101, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 63, Number 5, January 8, 1998 is incorporated by reference. [The amendment to 29 CFR 1926.1101, "Occupational Exposure to Asbestos", as published in the Federal Register, Volume 61, Number 165, August 23, 1996 is incorporated by reference.]

(c) The amendment to 29 CFR 1926.1101, "Occupational Exposure to Asbestos," as published in the Federal Register, Volume 63, Number 78, April 23, 1998 is incorporated by reference. [The addition of 29 CFR 1910.1152, "Methylene Chloride", as published in the Federal Register, Volume 62, Number 7, January 10, 1997, is incorporated by reference.]

(d) The amendment to 29 CFR 1926.1127, "Cadmium," as published in the Federal Register, Volume 63, Number 5, January 8, 1998, is incorporated by reference.

(2) This material may be inspected, obtained, and copied at: Kentucky Labor Cabinet, Division of Education and Training, U.S. 127 South, Frankfort, Kentucky 40601. Office hours are 8 a.m. - 4:30 p.m. (EST), Monday through Friday.

JOE NORSWORTHY, Chairman  
KEMBRA SEXTON TAYLOR, Attorney  
APPROVED BY AGENCY: June 23, 1998  
FILED WITH LRC: July 2, 1998 at 8 a.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Kembra S. Taylor, T. P. Chancellor

(1) Type and number of entities affected: The amendments to this regulation affect all employers in the construction industry within the jurisdiction of the Kentucky Occupational Safety and Health Program.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented: There are no costs or savings resulting from the promulgation of these proposed amendments, as these revisions change the "Necessity, Function, and Conformity" paragraph to meet KRS Chapter 13A considerations, update the reference to the current Code of Federal Regulations, and incorporate revisions to the asbestos and cadmium standards, as published in the Federal Register, January 8, 1998 and April 23, 1998, which delete requirements for fit-testing, respirator selection, and respirator use (as they are duplicative).

(b) Cost of doing business in the geographic area in which the administrative regulation will be implemented: There will be no cost effected from this revision.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

competition) for the:

1. First year following implementation:
2. Second and subsequent years: There are no additional factors regarding these revisions will increase or decrease costs. There will be no effect on competition.
- (3) Effects on the promulgating administrative body: The promulgating body will not be affected by the adoption of these revisions.
  - (a) Direct and indirect costs or savings:
    1. First year:
    2. Continuing costs or savings:
    3. Additional factors increasing or decreasing costs:
  - (b) Reporting and paperwork requirements: There will be no reporting or paperwork requirements as a result of these changes.
  - (4) Assessment of anticipated effect on state and local revenues: These revisions will have no anticipated effect on state and local revenues.
  - (5) Source of revenue to be used for implementation and enforcement of administrative regulation: Current state and federal funding.
  - (6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:
    - (a) Geographic area in which administrative regulation will be implemented: Undetermined; no public comments were received.
    - (b) Kentucky: Undetermined; no public comments were received.
  - (7) Assessment of alternative methods; reasons why alternative were rejected: Alternative methods were not considered as these proposed regulations incorporate, by reference, federal regulations published in the Federal Register, change the "Necessity, function, and Conformity" paragraph to meet KRS Chapter 13A considerations, and update the reference to the current Code of Federal Regulations.
  - (8) Assessment of expected benefits:
    - (a) Identify effects on public health and environmental welfare of the geographic area in which implemented and on Kentucky: These proposed amendments will enhance worker safety throughout Kentucky.
    - (b) State whether detrimental effect on environment and public health would result if not implemented:
    - (c) If detrimental effect would result, explain detrimental effect:
  - (9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There is no conflicting, overlapping, or duplication as a result of adoption of these proposed amendments.
    - (a) Necessity of proposed regulation if in conflict:
    - (b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:
  - (10) Any additional information or comments:
  - (11) TIERING: Was tiering applied? No. Kentucky's Occupational Safety and Health Program regulations affect all employers with one or more employees. Inspections are conducted at the facilities of those industries or firms that pose higher risks to worker safety and health, those employers from which the KYOSH Program has received worker complaints or referrals, or where a workplace fatality (or accident resulting in the hospitalization of three or more employees) has occurred.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. PL 91-596 (Occupational Safety and Health Act of 1970, Section 18(c)(2)).
2. State compliance standards. These amendments change the "Necessity, Function, and Conformity" paragraph to meet KRS Chapter 13A considerations, update the reference to the current Code of Federal Regulations, and incorporate revisions, as published in the Federal Register, January 8, 1998, which delete requirements for fit-testing, respirator selection, and respirator use (as they are duplicative), and.
3. Minimum or uniform standards contained in the federal mandate. The amendments adopt revisions to the previously adopted regulations, 29 CFR 1926.1101 "Asbestos," and 29 CFR 1926.1127, "Cadmium," as published in the Federal Register, Volume 63, Num-

ber 5, January 8, 1998, and corrections to the January 8 revisions to the asbestos standard, published April 23, 1998.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This proposed amended revision incorporates the federal regulations.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. These revisions impose no stricter, additional or different responsibilities than federal standards.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. These amendments affect local government that employ workers involved in construction work where cadmium or asbestos is used.

3. State the aspect or service of local government to which this administrative regulation relates. The proposed regulations affect the safety and health of employees involved in construction work where cadmium or asbestos is found.

4. How does this administrative regulation affect the local government or any service it provides? The purpose of these amendments is to comply with federal regulations relating to occupational safety and health. There will be no increase or decrease in local government revenues or significant expenditures. These proposed amendments will not affect the number of local government employees.

### STATEMENT OF EMERGENCY 806 KAR 17:160E

This emergency administrative regulation defines "public health plan," a type of creditable coverage. This administrative regulation also defines categories of benefits as creditable coverage, the aggregate periods of which may be used to reduce the waiting period for a preexisting condition exclusion. Lastly, this administrative regulation provides certification forms for use in certifying periods of creditable coverage. HB 315 was signed as an emergency bill by the Governor and became effective on April 10, 1998. This bill relates to health insurance and the reform thereof. The emergency nature of this bill requires the department to take immediate measures toward the implementation of the several components of the bill for the protection of human health. One (1) such component is in regards to defining the various aspects of creditable coverage, including the manner of certification. This emergency administrative regulation establishes definitions, categories of benefits, and forms for the certification of creditable coverage. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor  
LAURA M. DOUGLAS, Secretary  
GEORGE NICHOLS III, Commissioner

### PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance

#### 806 KAR 17:160E. Creditable coverage for health insurance.

RELATES TO: 1998 RS HB 315, secs. 1, 4, 45 CFR 146.113, 42 USC 300gg

STATUTORY AUTHORITY: 1998 RS HB 315, secs. 1(6)(A)9, 4(4)(c)1, (d)

EFFECTIVE: June 19, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 permits the Commissioner of Insurance to make reasonable rules and regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. 1998 RS HB 315 Section 1(6)(a)9 incorporates a "public health plan" within the definition of "creditable coverage." 1998 RS HB 315 Section 1(6)(a)9 requires

the commissioner to define public health plan. In addition, 1998 RS HB 315 Section 4(4)(c)2 permits the commissioner to specify categories of benefits. In accordance with 1998 RS HB 315 Section 4(2)(c), the periods of creditable coverage within these categories of benefits may be used to reduce the preexisting condition exclusion applicable to the participant or beneficiary. Lastly, 1998 RS HB 315 Section 4(4)(d) permits the commissioner to specify how periods of creditable coverage may be certified.

Section 1. Definitions. "Public health plan" means any plan established or maintained by a state, county, or other political subdivision of a state that provides health insurance coverage to individuals who are enrolled in the plan.

Section 2. Categories of Benefits. A group health plan or health insurer offering group health coverage may use the following categories of benefits as creditable coverage, the aggregate periods of which may be used to reduce or eliminate the waiting period for a preexisting condition exclusion:

- (1) Mental health;
- (2) Substance abuse treatment;
- (3) Prescription drugs;
- (4) Dental care; and
- (5) Vision care.

Section 3. Creditable Coverage Certification. (1) The certification for periods of creditable coverage with respect to an insured covered under an individual health benefit plan shall be in the form provided in the Certificate of Individual Health Plan Coverage which is incorporated by reference into this administrative regulation.

(2) The certification for periods of creditable coverage with respect to an insured enrolled in a group health benefit plan shall be in the form provided in the Certificate of Group Health Plan Coverage which is incorporated by reference into this administrative regulation.

Section 4. Material Incorporated by Reference. (1) The following material is incorporated by reference:

- (a) "Certificate of Individual Health Plan Coverage (05/1998 Edition)"; and
- (b) "Certificate of Group Health Plan Coverage (05/1998 Edition)".

(2) This material may be inspected, copied, or obtained at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GEORGE NICHOLS III, Commissioner  
LAURA M. DOUGLAS, Secretary  
GALE PEARCE, General Counsel

APPROVED BY AGENCY: June 17, 1998

FILED WITH LRC: June 19, 1998 at 3 p.m.

CONTACT PERSON: Sharron S. Burton, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, PH: (502) 564-6032 ext. 249, FAX: (502) 564-1456.

#### REGULATORY IMPACT ANALYSIS

Contact person: Sharron S. Burton

(1) Type and number of entities affected: This administrative regulation will affect the approximately 1900 insurers and health maintenance organizations authorized to write health insurance in the state of Kentucky. This administrative regulation will also affect prospective insureds who may be enrolled under a group or individual health benefit plan and who may have a preexisting condition. The department has no way of determining how many prospective insureds may be affected by this administrative regulation.

(2) Direct and indirect costs or savings on the :

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received

no public comments regarding this issue.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: A Certificate of Individual Health Plan Coverage or a Certificate of Group Health Plan Coverage may be required if an individual becomes eligible for coverage under a health plan that excludes coverage for certain preexisting medical conditions. This certificate may also be required if medical advice, diagnosis, care, or treatment was recommended or received for a condition within a six-month period prior to coverage under a new health plan.

2. Second and subsequent years: Certificates may be required whenever an individual becomes eligible for coverage under a health plan that excludes coverage for certain preexisting medical conditions. This could apply in the second and subsequent years after implementation of this administrative regulation.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The department's primary responsibility with respect to this administrative regulation will be the enforcement of its provisions. The department does not anticipate any major impact upon the department's costs or savings due to the implementation of this administrative regulation.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Should a complaint arise regarding an insured's creditable coverage, the department will be required to follow complaint procedures and complete the appropriate paperwork. Otherwise, there will be no reporting or paperwork requirements of the department due to the implementation of this administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: The department does not anticipate that there will be any effect on state and local revenues caused by the implementation of this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget for the Department of Insurance will be used to implement and enforce this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: The department has received no public comments regarding this issue.

(b) Kentucky: The department has received no public comments regarding this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: 1998 RS HB 315 Section 1(6)(a)9 specifically requires the Commissioner of Insurance to define public health plan as that term relates to creditable coverage. In addition, 1998 RS HB 315 Section 4 permits the commissioner to specify the categories of benefits that may be used to reduce the waiting period for a preexisting condition exclusion applicable to a health plan participant or beneficiary. Lastly, 1998 RS HB 315 Section 4(4)(d) permits the commissioner to specify how periods of creditable coverage may be certified. An administrative regulation is necessary in order to establish the definitions and guidelines related to creditable coverage. No other alternatives were considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will clarify the circumstances under which an insured may be credited for prior health coverage in order to avoid the application of insurance contract provisions that exclude the coverage of certain preexisting conditions.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes. A detrimental effect on public health would result if not implemented.

(c) If detrimental effect would result, explain detrimental effect: Absent this administrative regulation, there would be no categories of benefits that could be credited in order for an insured avoid or reduce the waiting period for coverage of certain preexisting medical



conditions.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applied since this administrative regulation applies to all insurers that issue, deliver, or renew individual or group health benefit plans in Kentucky. This administrative regulation will also apply to all individuals who may be enrolled under an individual or group health plan. Application of this administrative regulation to these individuals does not require the application of tiering.

**STATEMENT OF EMERGENCY**  
**806 KAR 17:170E**

This emergency administrative regulation defines "genetic test," "genetic information" and "genetic services." 1998 RS HB 315 was signed as an emergency bill by the Governor and became effective on April 15, 1998. This bill relates to health insurance and the reform thereof. The emergency nature of HB 315 requires the department to take immediate measures toward implementing its provisions. Various provisions of HB 315 refer to genetic test, genetic information, and genetic services. Because HB 315 did not specifically define these terms, it is necessary for the Commissioner or Insurance to promulgate an emergency administrative regulation to define genetic test, genetic information, and genetic services. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor  
LAURA M. DOUGLAS, Secretary  
GEORGE NICHOLS III, Commissioner

**PUBLIC PROTECTION AND REGULATION CABINET**  
**Department of Insurance**

**806 KAR 17:170E. Genetic testing.**

RELATES TO: 1998 RS HB 315 sec. 2(1)(f), 4(3)(a)2, 5(3), 55(2), (3), (4)

STATUTORY AUTHORITY: KRS 304.2-110

EFFECTIVE: July 2, 1998

NECESSITY, CONFORMITY, AND FUNCTION: KRS 304.2-110 permits the Commissioner of Insurance to make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the Kentucky Insurance Code. In order to enforce the provisions of 1998 RS HB 315, it is necessary for the Commissioner of Insurance to define "genetic test," "genetic information," and "genetic services." This administrative regulation establishes the definitions for those terms.

Section 1. Definitions. (1) "Genetic information" means information derived from a genetic test.

(2) "Genetic services" mean medical services employed to gather genetic information.

(3) "Genetic test" means a laboratory test of human DNA or RNA used to identify the presence or absence of inherited alterations with the DNA or RNA which cause predisposition to disease or illness. A genetic test does not include:

(a) A routine physical examination or a routine test performed as a part of a physical examination;

(b) A chemical, blood, or urine analysis;

(c) A test to determine drug use;

(d) A test for the presence of the human immunodeficiency virus; or

(e) Any test commonly approved in clinical practice by the Federal Food and Drug Administration.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

GALE PEARCE, General Counsel

CONTACT PERSON: Sharron S. Burton, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 215, Frankfort, Kentucky 40601, PH: (502) 564-6032, FAX: (502) 564-1456.

APPROVED BY AGENCY: July 1, 1998

FILED WITH LRC: July 2, 1998 at 8 a.m.

**REGULATORY IMPACT ANALYSIS**

Contact person: Sharron S. Burton

(1) Type and number of entities affected: This administrative regulation affects the approximately 1900 insurers and health maintenance organizations authorized to write health insurance in the state of Kentucky.

(2) Direct and indirect costs or savings on the :

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: This administrative regulation does not contain any reporting or paperwork requirements. This administrative regulation is informative in that it defines and clarifies terms used by 1998 RS HB 315.

2. Second and subsequent years: This administrative regulation does not contain any reporting or paperwork requirements for the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: The department does not anticipate that there will be any effect on state and local revenues caused by the implementation of this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget for the department of Insurance will be used to implement and enforce this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: The department has received no public comments regarding this issue.

(b) Kentucky: The department has received no public comments regarding this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Since the enactment of 1998 RS HB 315, the Department of Insurance has received numerous inquiries regarding the department's interpretation of genetic test, genetic information, and genetic services. The department considered issuing an informal opinion to clarify the department's position with respect to these terms. This alternative was rejected due to the department's inability to enforce an advisory opinion. Therefore, the department chose to promulgate an administrative regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: 1998 RS HB 315 provides specific instruction to insurers regarding their treatment of genetic information, genetic tests, and genetic services. By defining these terms, an insurer may better determine whether a preexisting condition is present; whether the insurer may deny, cancel, or refuse to renew benefits or coverage on the basis of a test or service; or whether disclosure of a test is permitted.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on public health would result if this administrative regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: If this administrative regulation were not implemented, persons who have had a genetic test or who have requested or received genetic services may be wrongfully denied or refused health insurance coverage. In addition, certain genetic information might be treated as a preexisting condition absent this administrative regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applied since this administrative regulation applies to all insurers and health maintenance organizations issuing health benefit plans in Kentucky.

#### STATEMENT OF EMERGENCY 806 KAR 17:180E

This emergency administrative regulation establishes the standard health benefit plan and the format for the comparison of benefits. HB 315 was signed as an emergency bill by the Governor and became effective on April 10, 1998. This bill relates to health insurance and the reform thereof. The emergency nature of this bill requires the department to take immediate measures toward the implementation of the several components of the bill for the protection of human health. As required by HB 315, this emergency administrative regulation defines the standard health benefit plan and establishes the format for the comparison of health plan benefits. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor  
LAURA M. DOUGLAS, Secretary  
GEORGE NICHOLS III, Commissioner

#### PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance

#### 806 KAR 17:180E. Standard health benefit plan and comparison format.

RELATES TO: 1998 RS HB 315, secs. 2 -7, 18, 49

STATUTORY AUTHORITY: 1998 RS HB 315, sec. 7(1), (7)(a)

EFFECTIVE: June 19, 1998

NECESSITY, FUNCTION, AND CONFORMITY: 1998 RS HB 315, sec. 7(1) mandates the commissioner to define by administrative regulation one (1) standard health benefit plan that shall provide health insurance coverage in the individual and small group markets after June 30, 1998. 1998 RS HB 315, sec. 7(7)(a) requires the commissioner to prescribe a standard format for comparison of the standard plan benefits to other offered comparable plans. 1998 RS HB 315, sec. 7(7)(a) requires that the benefit comparison format include style, arrangement, overall appearance, and content of the benefit comparisons.

Section 1. Definitions. (1) "FFS" means a fee-for-service product type.

(2) "HMO" means a health maintenance organization product type.

(3) "POS" means a point-of-service product type.

(4) "PPO" means a preferred provider organization product type.

(5) "Standard health benefit plan" means the format, cost-sharing levels, definitions, benefits, exclusions, and supplemental benefit riders established by the Department of Insurance and the Health Insurance Advisory Council in accordance with 1998 RS HB 315, sec. 7 and any other health insurance benefit established by the General Assembly.

Section 2. Standard Benefits Comparison Format. (1) At the time of initial solicitation of health insurance coverage in the individual or nonemployer small group markets, the person soliciting the product shall complete and deliver a benefit comparison form applicable to the product being solicited as follows:

(a) A FFS health benefit plan shall be compared to the FFS standard benefit plan by using the Fee-for-Service Health Benefit Plan Comparison Form which is incorporated by reference into this administrative regulation.

(b) A HMO health benefit plan shall be compared to the HMO standard benefit plan by using the HMO Health Benefit Plan Comparison Form which is incorporated by reference into this administrative regulation.

(c) A POS health benefit plan shall be compared to the POS standard benefit plan by using the POS Health Benefit Plan Comparison Form which is incorporated by reference into this administrative regulation.

(d) A PPO health benefit plan shall be compared to the PPO standard benefit plan by using the PPO Health Benefit Plan Comparison Form which is incorporated by reference into this administrative regulation.

(2)(a) For each product type listed in subsection (1) of this section, the person soliciting health insurance coverage shall compare the standard health benefit plan exclusions to the exclusions in the health benefit plan being solicited by using the "Kentucky Standard Health Benefit Plan Comparison Form: Exclusions", which is incorporated by reference into this administrative regulation.

(b) With respect to the "Kentucky Standard Health Benefit Plan Comparison Form: Exclusions," the person soliciting health insurance coverage shall:

1. Witness the signature of the prospective applicant on the exclusions comparison form;

2. Sign the exclusions comparison form;

3. Date the exclusions comparison form as of the date of solicitation; and

4. Attach the exclusions comparison form to the applicable product comparison form completed pursuant to subsection (1) of this section.

(c) The person soliciting health insurance coverage shall deliver a copy of each completed benefit comparison form, together with a copy of the completed and signed exclusions comparison form, to the prospective applicant and to the insurer whose product is being solicited.

Section 3. Modification Process. (1) The standard health benefit plan and each comparison form shall remain in effect until July 15, 1999, and thereafter until such time as the plan or any form is modified in accordance with the procedures established by this section.

(2) The standard health benefit plan and each comparison form may be modified each successive year after July 15, 1999. Each modification shall apply to each policy or certificate issued or renewed on or after July 15 of each year.

(3) Any interested person wishing to make a recommendation for modification of the standard plan shall:

(a) Submit their recommendation, in writing, to the Kentucky Department of Insurance, Division of Life and Health, by November 30 of the year preceding the year in which each modification is recommended for implementation.

(b) Explain the need for each recommended modification.

(c) Provide a statement regarding the cost effect of each recommended modification.

(4) Within a reasonable time after November 30 of each year:

(a) The department shall present each recommendation for modification received pursuant to subsection (3) of this section to the Health Insurance Advisory Council for consideration; and

(b) The Health Insurance Advisory Council shall review and discuss each recommendation for modification of the standard health benefit plan in accordance with 1998 RS HB 315, sec. 49;

(c) The Health Insurance Advisory Council shall make a final recommendation for modification of the standard health benefit plan based on the recommendations presented by the department pursuant to paragraph (a) of this subsection; and

(d) After considering the final recommendation for modification from the Health Insurance Advisory Council, the department shall

either accept or decline, in writing, to modify the standard health benefit plan.

(5) Each insurer issuing, delivering, or renewing a health benefit plan shall:

(a) Implement each modification to the standard health benefit plan and each benefit comparison form prescribed by the department; and

(b) Amend each policy form and rate filing to include every modification to the standard health benefit plan and each benefit comparison form.

(c) Complete and attach Form LH-35, "Health Benefit Plan Summary Sheet - Form Filings" to each health benefit plan filed with the department.

Section 4. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Fee-for-Service Health Benefit Plan Comparison Form (1998 Edition)";

(b) "HMO Health Benefit Plan Comparison (1998 Edition)";

(c) "POS Health Benefit Plan Comparison Form (1998 Edition)";

(d) "PPO Health Benefit Plan Comparison Form (1998 Edition)";

(e) "Kentucky Standard Health Benefit Plan Comparison Form: Exclusions (1998 Edition)";

(f) Form LH-35, "Health Benefit Plan Summary Sheet - Form Filings (1998 Edition)".

(2) This material may be inspected, copied, or obtained at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

GALE PEARCE, General Counsel

APPROVED BY AGENCY: June 17, 1998

FILED WITH LRC: June 19, 1998 at 3 p.m.

CONTACT PERSON: Sharron S. Burton, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, PH: (502) 564-6032, FAX: (502) 564-1456.

#### REGULATORY IMPACT ANALYSIS

Contact person: Sharron S. Burton

(1) Type and number of entities affected: This administrative regulation will affect the approximately 1900 insurers and health maintenance organizations authorized to write health insurance in the state of Kentucky. This administrative regulation will also affect those who solicit health insurance coverage in the individual and small group markets. Currently, there are approximately 29,000 agents who are authorized to solicit health insurance coverage in the state of Kentucky.

(2) Direct and indirect costs or savings on the :

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: This administrative regulation will require persons soliciting health insurance coverage in the state of Kentucky to complete comparison forms and deliver the forms to the prospective applicant and the insurer. In addition, insurers will be required to offer the standard health benefit plan established by this administrative regulation. Lastly, insurers will be required complete and attach Form LH-35 to each health benefit plan filed with the department.

2. Second and subsequent years: The paperwork requirements for the first year following implementation of this administrative regulation will continue for the second and subsequent years. In addition, insurers may be required to amend policy forms and rate

filings to comply with any modifications to the standard health benefit plan and the benefit comparison forms.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation will require the department to collect and review recommendations for additions, deletions, or corrections to the standard health benefit plan and the benefits comparison format. The department will be required to either accept or decline the recommended modifications to the plan and comparison forms. The department anticipates that the cost of this review will be minimal.

2. Continuing costs or savings: The department will be required to review recommended modifications to the standard plan and comparison forms on an annual basis.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The department currently receives and reviews health benefit plan form filings submitted by insurers. Form LH-35, which is required by this administrative regulation, will assist the department in this review. Also, beginning in the year 1999 and every year thereafter, the standard health benefit plan may be modified. With the assistance of the Health Insurance Advisory Council, the department will review recommendations for modification of the standard health benefit plan and either accept or decline to implement the recommendations in writing.

(4) Assessment of anticipated effect on state and local revenues: The department does not anticipate that there will be any effect on state and local revenues caused by the implementation of this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget for the Department of Insurance will be used to implement and enforce this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: The department has received no public comments regarding this issue.

(b) Kentucky: The department has received no public comments regarding this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: 1998 RS HB 315 requires the department to promulgate an administrative regulation that establishes the standard health benefit plan and the format for the comparison of health plan benefits. No other alternatives were considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will assure that consumers of health insurance coverage in the state of Kentucky are informed about the benefits contained in the standard health benefit plan as opposed to the benefits in other comparable plans that are offered. In addition, this administrative regulation provides a process for modifying the standard health benefit plan and the format for the comparison of benefits and exclusions.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect of public health would result if this administrative regulation was not implemented.

(c) If detrimental effect would result, explain detrimental effect: If this administrative regulation were not implemented there would be no uniform comparison benefit form that the consumers of health insurance coverage could utilize to compare the standard health benefit plan and other health benefit plans being offered. As a result, there would be fewer informed decisions with regards to the purchase of health insurance coverage in the state of Kentucky. Also, if this administrative regulation were not implemented there would be no procedures specified for modifying the standard health benefit plan.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed

administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applied since this administrative regulation applies to all insurers that issue, deliver, or renew health benefit plans in Kentucky. Neither is tiering applied with respect to persons soliciting health insurance coverage since this administrative regulation applies to all persons soliciting health insurance coverage to individuals or nonemployer small groups in Kentucky.

**STATEMENT OF EMERGENCY**  
**806 KAR 17:190E**

This emergency administrative regulation establishes the Guaranteed Acceptance Program requirements. 1998 RS HB 315 was signed as an emergency bill by the Governor and became effective on April 10, 1998. This bill relates to health insurance and the reform thereof. The emergency nature of HB 315 requires the department to take immediate measures toward implementing its provisions. One (1) such provision relates to the establishment of the Guaranteed Acceptance Program ("GAP"). This emergency administrative regulation establishes the requirements of GAP, which provides a more cost effective means to provide health insurance to treat high cost conditions. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor  
LAURA M. DOUGLAS, Secretary  
GEORGE NICHOLS III, Commissioner

**PUBLIC PROTECTION AND REGULATION CABINET**  
**Department of Insurance**

**806 KAR 17:190E. Guaranteed Acceptance Program requirements.**

RELATES TO: 1998 RS HB 315 sec. 3, 17, 18

STATUTORY AUTHORITY: KRS 304.2-110, 1998 RS HB 315 sec. 3(5)(b), 18

EFFECTIVE DATE: July 2, 1998

NECESSITY, FUNCTION, AND CONFORMITY: 1998 RS HB 315, Section 3(5)(b) requires the Commissioner of Insurance to establish equitable enrollment limits for new market insurers for the first twelve (12) months, and any remaining portion of the calendar year after the expiration of a twelve (12) month period. 1998 RS HB 315, Section 18 permits a GAP participating insurer to use the alternative underwriting mechanism; and requires the commissioner to approve or disapprove the alternative underwriting mechanism criteria submitted by the insurer. KRS 304.2-110 authorizes the commissioner to make administrative regulations to effect any provision of the code.

Section 1. Definitions. (1) "AUM" means Alternative underwriting mechanism.

(2) The definition of "alternative underwriting mechanism" shall be governed by 1998 RS HB 315, Section 18(3).

(3) The definition of "commissioner" shall be governed by KRS 304.1-050.

(4) "GAP" means the Guaranteed Acceptance Program.

(5) The definition of "Guaranteed Acceptance Program" shall be governed by 1998 RS HB 315, Section 1(14).

(6) "GAP health benefit plan" means a health benefit plan issued to an individual with a high cost condition or to an individual meeting the AUM criteria.

(7) "GAP participant" means a GAP qualified individual defined in 1998 RS HB 315, Section 1(15) who has been issued a GAP health benefit plan.

(8) The definition of "GAP participating insurer" shall be governed by 1998 RS HB 315, Section 1(12).

(9) The definition of "GAP qualified individual" shall be governed by 1998 RS HB 315, Section 1(15).

(10) The definition of "high cost condition" shall be governed by 1998 RS HB 315, Section 1(19).

(11) "Mandatory GAP participating insurer" means a health insurer in Kentucky that has twenty-five (25) percent or more of the market share and is required to be a GAP participating insurer.

(12) "Voluntary GAP participating insurer" means a health insurer that has less than twenty-five (25) percent of the market share and elects to be a GAP participating insurer.

(13) "New market insurer" means an insurer that enters the individual health market as a voluntary GAP participating insurer in Kentucky on or after July 1, 1998.

(14) "New market period" means a period extending twelve (12) months from the date a new market insurer enters the individual health insurance market in Kentucky, and includes the remainder of the calendar year after the twelve (12) month period expires.

Section 2. GAP Participating Insurer Requirements. A GAP insurer shall notify the commissioner of the effective date for GAP participation in writing with the following information:

(1) Name of GAP health benefit plan;

(2) Product type of the health benefit plan;

(3) Geographic service area of the GAP health benefit plan;

(4) Cost containment features required in 1998 RS HB 315, Section 20; and

(5) Any modification made to an existing health benefit plan to qualify it as a GAP health benefit plan.

Section 3. Enrollment Limits for a GAP Participating Insurer. (1) For the first quarter a new market insurer enters the individual market, the insurer may not enroll any individuals in GAP.

(2) At the end of the first quarter, the new market insurer shall have a GAP enrollment limit of five-tenths (0.5) percent of its quarterly enrollment of the individual market projected until the end of the new market period.

(3) If the new market insurer meets the enrollment limit required in subsection (2) of this section in the subsequent calendar quarter, then the insurer shall be deemed to have met its GAP enrollment limit requirement until the end of the new market period.

(4) If the insurer does not meet the GAP enrollment limit required in subsection (2) of this section in the subsequent quarter, the quarterly enrollment at the time will be used to project a new GAP enrollment limit in accordance with subsection (2) of this section.

(5) When the new market period has elapsed, the insurer will be subject to the GAP enrollment limit of five-tenths (0.5) percent of its total enrollment in the individual market as of the preceding December 31.

(6) A mandatory GAP participating insurer shall have no limit on the number of individual GAP health benefit plans.

Section 4. Issuance of a GAP Health Benefit Plan. A GAP participating insurer shall have two (2) months from the effective date of its GAP participation implementation date to identify an individual for GAP health benefit plan coverage in accordance with 1998 RS HB 315, Section 18(1)(b).

Section 5. AUM Criteria. (1) A GAP participating insurer electing to use AUM shall submit to the commissioner for review and approval written documentation of its underwriting guideline criteria for AUM.

(2) If underwriting documentation does not exist, other documentation which supports underwriting AUM may be submitted to the commissioner for review and approval.

(3) After approval of an insurer's underwriting guideline criteria for AUM, each insurer shall resubmit its underwriting guideline criteria for AUM by December 1 of each year for approval for the subsequent year.

(4) Any change to the underwriting guideline criteria for AUM submitted for a subsequent calendar year shall require:

(a) Justification for the change; and

(b) Documentation of the insurer's underwriting criteria.

(5) Upon receipt of approval by the commissioner, a GAP participating insurer shall implement its underwriting guideline criteria for AUM.

(6) A GAP participating insurer shall use the same standards for AUM as for other high-cost conditions as set forth in 1998 RS HB 315, Section 18(2) regarding continuance in GAP plan.

Section 6. GAP Participation Termination Requirements. (1) A mandatory GAP participating insurer shall not terminate its participation in GAP.

(2) A voluntary GAP participating insurer may elect to terminate its status as a GAP participating insurer and shall submit a termination letter to the commissioner by September 1 of each year that shall include:

(a) The effective date of termination for issuing a GAP health benefit plan; and

(b) The reason for the termination from GAP.

(3) Upon notification of termination to the commissioner, the GAP participating insurer shall:

(a) Not issue new GAP health benefit plans;

(b) Provide a ninety (90) day notice to GAP participants advising of the insurers GAP participation termination status; and

(c) Provide coverage to currently enrolled GAP participants until renewal of the GAP health benefit plan.

(4) A voluntary GAP participating insurer failing to notify the commissioner by the first day of September of each year of its GAP termination status as established in subsection 2 of this section shall be required to issue and renew GAP health benefit plans for the subsequent calendar year.

(5) A voluntary GAP participating insurer terminating its GAP participation may subsequently reapply to become a GAP participating insurer subject to approval by the commissioner.

(6) The commissioner may elect to terminate the status of a GAP participating insurer that is in hazardous financial condition pursuant to 806 KAR 3:150.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

GALE PEARCE, General Counsel

CONTACT PERSON: Sharron S. Burton, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 215, Frankfort, Kentucky 40601, PH: (502) 564-6032, FAX: (502) 564-1456.

APPROVED BY AGENCY: July 1, 1998

FILED WITH LRC: July 2, 1998 at 8 a.m.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Sharron Burton

(1) Type and number of entities affected: This regulation affects approximately 1900 insurers and health maintenance organizations authorized to write health insurance in the state of Kentucky. This regulation also affects individuals with a high-cost condition or those that meet the Alternative Underwriting Mechanism (AUM) criteria, whose numbers at this time are unknown.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: This administrative regulation compels insurers to comply with notice requirements and enrollment limits for the Guaranteed Acceptance Program. Use of the Alternative Underwriting Mechanism also includes notice and documentation requirements.

2. Second and subsequent years: This administrative regulation compels insurers to comply with notice requirements and enrollment limits for the Guaranteed Acceptance Program. Use of the Alternative Underwriting Mechanism also includes notice and documentation requirements.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The department's primary responsibility with respect to this administrative regulation will be the enforcement of its provisions. The department anticipates that the cost of review and

enforcement will be minimal.

2. Continuing costs or savings: The department will be required to review and enforce the provisions on a continuing basis.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The department will collect data to evaluate the participation and effectiveness of GAP.

(4) Assessment of anticipated effect on state and local revenues: The department does not anticipate that there will be any effect on state and local revenues caused by the implementation of this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget for the Department of Insurance will be used to implement and enforce this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: The department has received no public comments regarding this issue.

(b) Kentucky: The department has received no public comments regarding this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: 1998 RS HB 315, Sections 3, 15-23, require the Department of Insurance to implement the Kentucky Guaranteed Acceptance Program (GAP). For this reason, no other alternatives were considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will enable health insurers to identify the requirements for a GAP participating insurer and a GAP supporting insurer.

(b) State whether a detrimental effect on environment and public health would result if not implemented: If this administrative regulation were not implemented, a detrimental effect on public health would result.

(c) If detrimental effect would result, explain the detrimental effect: If this administrative regulation were not implemented there would be no means to:

1. Set new market enrollment entries for GAP;
2. Understand the criteria for participation in GAP;
3. Allow insurers to withdraw from GAP; and
4. Evaluate the criteria for AUM.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering does not apply since this administrative regulation applies to all health insurers and stop-loss carriers operating in Kentucky. Neither does tiering applied in relation to individuals with a high-cost condition or those that meet the Alternative Underwriting Mechanism (AUM) criteria.

#### STATEMENT OF EMERGENCY

806 KAR 17:200E

This emergency administrative regulation establishes the standards insurance underwriters will use in designating the severity of each high-cost condition for inclusion in the Guaranteed Acceptance Program. 1998 RS HB 315 was signed as an emergency bill by the Governor and became effective on April 10, 1998. This bill relates to health insurance and the reform thereof. The emergency nature of HB 315 requires the department to take immediate measures toward the implementation of its components. One such component relates to the establishment of the Kentucky Guaranteed Acceptance Program (GAP). GAP assures the availability of health insurance coverage for individuals with a high-cost condition. This emergency administrative regulation provides specific codes that identify the severity of each high-cost condition. This emergency administrative

regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor  
LAURA M. DOUGLAS, Secretary  
GEORGE NICHOLS III, Commissioner

**PUBLIC PROTECTION AND REGULATION CABINET**  
**Department of Insurance**

**806 KAR 17:200E. Severity codes for high-cost conditions.**

RELATES TO: 1998 RS HB 315 sec. 1(19)

STATUTORY AUTHORITY: 1998 RS HB 315 sec. 1(19)(b)

EFFECTIVE: July 2, 1998

NECESSITY, FUNCTION, AND CONFORMITY: 1998 RS HB 315 Section 1(19)(b)1 requires the commissioner to establish uniform underwriting standards and a score or rating above which a condition is considered to be high-cost. The commissioner is required to use the most recent version of the "International Classification of Diseases" to identify a high-cost condition of an individual who is a Guaranteed Acceptance Program qualified individual, and to use a questionnaire incorporated in a national underwriting guide.

Section 1. Definitions. (1) "Certified medical statement" means the written statement of a health care professional which:

(a) Verifies that the individual has a high-cost condition; and  
(b) Includes a code from the most recent version of the International Classification of Diseases, Ninth Revision, Clinical Modification, ("ICD-9-CM") that represents a high-cost condition.

(2) "ICD-9-CM" means the International Classification of Diseases, Ninth Revision, Clinical Modification that provides an official code for each high-cost condition.

(3) The definition of "commissioner" shall be governed by KRS 304.1-050.

(4) "GAP" means the Guaranteed Acceptance Program.

(5) The definition of "Guaranteed Acceptance Program" shall be governed by 1998 RS HB 315 Section 1(14).

(6) The definition of "Guaranteed Acceptance Program participating insurer" shall be governed by 1998 RS HB 315 Section 1(12).

(7) "Health care professional" means a practicing licensed or certified practitioner who has within his statutory scope of practice the authority to diagnose and treat a high-cost condition.

(8) The definition of "high-cost condition" shall be governed by 1998 RS HB 315 Section 1(19).

(9) "High-cost condition code" means an ICD-9-CM disease or procedure code representing a specified medical condition, the severity of which is designated by the commissioner as high cost.

(10) "High-cost condition severity questionnaire" means a questionnaire designated by the commissioner and based upon national medical insurance underwriting guidelines.

Section 2. High-cost Condition Codes. (1) A GAP participating insurer shall issue a health benefit plan to an individual in accordance with 1998 RS HB 315 Section 1(19) and each applicable administrative regulation promulgated by the Department of Insurance if the individual:

(a) Completes an application for an individual health benefit plan with a GAP participating insurer;

(b) Has a high-cost condition that shall be substantiated in both:

1. A certified medical statement; and  
2. A GAP "High-Cost Condition Severity Questionnaire," administered by the GAP participating insurer, as incorporated by reference in this administrative regulation, with an assigned score of:

a. Fifty (50) points or above, if the individual is eighteen (18) years or older; or

b. Twenty (20) points or above, if the individual is under the age of eighteen (18); and

(c) Pays an applicable premium for an individual health benefit plan.

(2) An ICD-9-CM disease code shall be required in the certified medical statement to:

(a) Designate the severity of each high-cost condition of an individual, with the exception that;

(b) Open heart surgery shall be designated by an ICD-9-CM procedure code.

(3) The ICD-9-CM code designated by the commissioner that corresponds to each high-cost condition shall be that which is identified in Appendix A to this administrative regulation.

(4) An insurer who issues a health benefit plan in Kentucky may annually submit a recommendation for modification of the list of ICD-9-CM codes established in Appendix A of this administrative regulation by letter to the commissioner with the following provisions:

(a) That the letter is received on or before the first day of March;  
(b) The letter shall contain a detailed reason for the modification; and

(c) Credible evidence to support the necessity of the requested modification.

Section 3. Incorporated by Reference. (1) "The High-Cost Condition Severity Questionnaire (1998 Edition)" by Milliman & Robertson, Inc.

(2) This material may be inspected, copied, or obtained at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

**APPENDIX A**

Acquired immune deficiency syndrome: 042

Angina pectoris: 413.1

Ascites: 789.5

Chemical dependency: 304.01; 304.81

Cirrhosis of the liver: 571.2; 571.5

Coronary insufficiency: 410.61; 414.01; 414.02; 414.04; 425.4

Coronary occlusion: 410.01; 410.11; 410.21; 410.31; 410.41; 410.51; 410.71; 410.81

Cystic fibrosis: 277.00

Friedreich's ataxia: 334.0

Hemophilia: 286.0; 286.1

Hodgkin's disease: 201.54; 201.91

Huntington's chorea: 333.4

Juvenile diabetes: 250.13; 250.41; 250.73

Leukemia: 204.00; 204.01; 205.00

Metastatic cancer: 196.3; 196.6; 197.0; 197.1; 197.2; 197.4; 197.6; 197.8; 198.1; 198.3; 198.4; 198.5; 198.6

Motor or sensory aphasia: 784.3

Multiple sclerosis: 340

Muscular dystrophy: 359.1

Myasthenia gravis: 358.0

Myotonia: 359.2

Open heart surgery: 33.6; 35.10; 35.11; 35.13; 35.14; 35.20; 35.21;

35.22; 35.23; 35.24; 35.25; 35.26; 35.27; 35.28; 35.31; 35.32;

35.33; 35.34; 35.35; 35.39; 35.42; 35.50; 35.51; 35.53; 35.54;

35.60; 35.61; 35.62; 35.63; 35.70; 35.71; 35.72; 35.73; 35.81;

35.82; 35.83; 35.84; 35.91; 35.92; 35.93; 35.94; 35.95; 35.98;

35.99; 36.03; 36.10; 36.11; 36.12; 36.13; 36.14; 36.16; 36.17;

36.19; 36.2; 36.3; 36.91; 36.99; 37.10; 37.11; 37.31; 37.32;

37.33; 37.35; 37.4; 37.5; 37.61; 37.62; 38.14

Parkinson's disease: 332.0

Polycystic kidney: 753.13; 753.19

Psychotic disorder: 295.74; 296.04

Quadriplegia: 344.00; 344.01; 344.02; 344.03; 344.0

Stroke: 436; 997.02

Syringomyelia: 336.0

Wilson's disease: 275.1

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

GALE PEARCE, General Counsel

CONTACT PERSON: Sharron S. Burton, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 215, Frankfort, Kentucky 40601, PH: (502) 564-6032, FAX: (502) 564-1456.

APPROVED BY AGENCY: July 1, 1998

FILED WITH LRC: July 2, 1998 at 8 a.m.

**REGULATORY IMPACT ANALYSIS**

(1) Type and number of entities affected: This administrative



regulation affects the approximately 1900 insurers and health maintenance organizations authorized to write health insurance in the state of Kentucky. In addition, this administrative regulation affects every individual who, within the previous three (3) years has been diagnosed with or treated for a high-cost condition or has had benefits paid under a health benefit plan for a high-cost condition. This administrative regulation will also affect each individual who may, in the future, be diagnosed with a high-cost condition. The number of individuals who have been diagnosed or who will be diagnosed with a high-cost condition cannot be determined by the department.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: This administrative regulation requires a Guaranteed Acceptance Program ("GAP") participating insurer to issue coverage to each individual who has been diagnosed or certified by a health care professional as having a high-cost condition that corresponds to the ICD codes and severity levels identified in the administrative regulation.

2. Second and subsequent years: GAP participating insurers will be required to issue coverage to each individual who has been diagnosed or certified by a health care professional as having a high-cost condition that corresponds to the ICD codes and severity levels identified in this administrative regulation for the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The department's primary responsibility with respect to this administrative regulation will be the enforcement of its provisions. The department may incur some expenses for information systems development and some increase in costs to administer the GAP program.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: The department does not anticipate that there will be any effect on state and local revenues caused by the implementation of this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget for the Department of Insurance will be used to implement and enforce this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: The department has received no public comments regarding this issue.

(b) Kentucky: The department has received no public comments regarding this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: 1998 RS HB 315 Section 1(19)(b)(1), (2), require the commissioner to establish, by administrative regulation, uniform underwriting standards and a score or rating above which a condition is considered to be high-cost by using codes in the most recent version of the "International Classification of Diseases," and a national underwriting guide questionnaire. For this reason, no other alternatives were considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will enable GAP participating insurers to identify which conditions are considered to be high-cost by using the

severity codes established therein.

(b) State whether a detrimental effect on environment and public health would result if not implemented: If this administrative regulation were not implemented, a detrimental effect on public health would result.

(c) If detrimental effect would result, explain detrimental effect: If this administrative regulation were not implemented there would be no severity rating for high-cost conditions. Absent the severity rating, there is a potential that an individual with a high-cost condition may not be eligible for GAP participation, and thus not be able to afford health insurance.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering does not apply since this administrative regulation applies to all GAP participating insurers issuing health benefit plans in Kentucky. Neither does tiering apply in relation to individuals, since this administrative regulation applies to every individual who, within the previous three (3) years, has been diagnosed with or treated for a high-cost condition, or has had benefits paid under a health benefit plan for a high-cost condition or who may, in the future, be diagnosed with a high-cost condition.

## STATEMENT OF EMERGENCY 806 KAR 17:210E

This emergency administrative regulation establishes the reporting requirements for insurers participating in or supporting the Guaranteed Acceptance Program. 1998 RS HB 315 was signed as an emergency bill by the Governor and became effective on April 10, 1998. This bill relates to health insurance and the reform thereof. The emergency nature of HB 315 requires the department to take immediate measures toward the implementation of its components. One such component relates to the establishment of the Kentucky Guaranteed Acceptance Program (GAP). This administrative regulation requires GAP participating insurers and GAP supporting insurers to submit specific information regarding its insureds who are participants in GAP, information about GAP participating insurers, and information about GAP supporting insurers. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor  
LAURA M. DOUGLAS, Secretary  
GEORGE NICHOLS III, Commissioner

## PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance

### 806 KAR 17:210E. Reporting requirements for the Kentucky Guaranteed Acceptance Program.

RELATES TO: 1998 RS HB 315 sec. 21

STATUTORY AUTHORITY: 1998 RS HB 315 sec. 21 (1)

EFFECTIVE: July 2, 1998

NECESSITY, FUNCTION, AND CONFORMITY: 1998 RS HB 315 sec. 21(1) mandates the department define by administrative regulation reporting requirements for GAP. This administrative regulation prescribes the form and the time schedule for submitting reports to the department for each calendar year.

Section 1. Definitions. (1) "GAP" means the Guaranteed Acceptance Program

(2) The definition of "Guaranteed Acceptance Program" shall be governed by 1998 RS HB 315 Section (1) (14).

(3) Electronic report format ("ERF") means data submitted on a three and a half (3.5) inch diskette or a ZIP disk in a Microsoft Excel spreadsheet format.



Section 2. GAP Participating Insurer Monthly Report. On or before the 30th of each calendar month, a GAP participating insurer shall submit to the Department of Insurance ERF-1, completed in accordance with the procedural instructions for ERF-1 as incorporated by reference into this administrative regulation.

Section 3. GAP Supporting Insurer Quarterly Reports. Within thirty (30) days after the end of each calendar quarter, a GAP supporting insurer and a stop-loss insurer shall submit to the Department of Insurance ERF-2, completed in accordance with the procedural instructions for ERF-2 as incorporated by reference into this administrative regulation.

Section 4. GAP Participating Insurer Annual Reports. (1) Within forty-five (45) days after the end of each calendar year, a GAP participating insurer shall submit to the Department of Insurance ERF-3, be completed in accordance with the procedural instructions for ERF-3, as incorporated by reference into this administrative regulation.

Section 5. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) ERF-1, "Electronic Report Format for Guaranteed Acceptance Program Participating Insurer – Monthly Report" (1998 edition);

(b) ERF-2, "Electronic Report Format for Guaranteed Acceptance Program Supporting and Stop-loss Insurers– Quarterly Report" (1998 edition);

(c) ERF-3, "Electronic Report Format for Guaranteed Acceptance Program Participating Insurer – Annual Report" (1998 edition).

(2) This material may be inspected, copied, or obtained at the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

GALE PEARCE, General Counsel

CONTACT PERSON: Sharron S. Burton, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 215, Frankfort, Kentucky 40601, PH: (502) 564-6032, FAX: (502) 564-1456.

APPROVED BY AGENCY: July 1, 1998

FILED WITH LRC: July 2, 1998 at 8 a.m.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Sharron Burton

(1) Type and number of entities affected: This administrative regulation affects the approximately 1900 insurers and health maintenance organizations authorized to write health insurance in the state of Kentucky.

(2) Direct and indirect costs or savings on the :

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: This administrative regulation requires Guaranteed Acceptance Program (GAP) participating and supporting insurers to report specific information regarding its GAP participating insureds, information about GAP participating insurers, and information about GAP supporting insurers.

2. Second and subsequent years: This administrative regulation requires Guaranteed Acceptance Program (GAP) participating and supporting insurers to report specific information regarding its GAP participating insureds, information about GAP participating insurers, and information about GAP supporting insurers.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The department's primary responsibility with respect to this administrative regulation will be the enforcement of its provisions. The department may incur additional expenses for information systems development.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget for the Department of Insurance will be used to implement and enforce this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented:

(b) Kentucky: The department has received no public comments regarding this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: 1998 RS HB 315 Section 21 requires the commissioner to establish, by administrative regulation, the form and frequency every insurer shall report information to the Department of Insurance. For this reason, no other alternatives were considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will enable the Department of Insurance to administer and evaluate the GAP program.

(b) State whether a detrimental effect on environment and public health would result if not implemented: If this administrative regulation were not implemented, a detrimental affect on public health would result.

(c) If detrimental effect would result, explain detrimental effect: If this administrative regulation were not implemented the GAP program could not be administered nor its effectiveness evaluated.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering is not applied since this administrative regulation applies to all insurers issuing health benefit plans in Kentucky.

#### STATEMENT OF EMERGENCY 806 KAR 17:220E

This emergency administrative regulation establishes the approval criteria and the filing requirements for insurer's requesting to reenter the Kentucky health insurance market. 1998 RS HB 315 was signed as an emergency bill by the Governor and became effective on April 10, 1998. This bill relates to health insurance and the reform thereof. The emergency nature of HB 315 requires the department to take immediate measures toward implementing its provisions. One such provision relates insurers that request to reenter the Kentucky health insurance market after previously withdrawing from the market. Since the commissioner must either approve or disapprove the insurer's request to reenter the market, this emergency administrative regulation requires insurers to provide to the commissioner information that will assist the approval process. In addition, this administrative regulation eliminates any potential conflict between the reentry provisions contained in 42 USC 300gg Sec. 2472 and those contained in 1998 RS HB 315. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor

LAURA M. DOUGLAS, Secretary

GEORGE NICHOLS III, Commissioner

PUBLIC PROTECTION AND REGULATION CABINET  
Department of Insurance

**806 KAR 17:220E. Approval criteria and requirements for reentry into the Kentucky health insurance market.**

RELATES TO: 1998 RS HB 315 sec. 8, 42 USC 300gg sec. 2742

STATUTORY AUTHORITY: KRS 304.2-110  
EFFECTIVE: July 2, 1998

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110 permits the Commissioner of Insurance to make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the insurance code. 1998 RS HB 315 Section 8 provides that an insurer that, on or after July 15, 1995, until April 10, 1998, issued standard health benefit plans under KRS 304.17A-160 and then ceased doing business in Kentucky, may apply to the commissioner for approval to reenter the Kentucky market. The Commissioner of Insurance is required to either approve or disapprove an insurer's request to reenter the Kentucky market. This administrative regulation is necessary to assist the commissioner in his decision to approve or disapprove the insurer's request to reenter the Kentucky market. This administrative regulation is also necessary to assure that the market reentry provisions in 1998 RS HB 315 conform to the market reentry provisions in 42 USC 300gg Section 2742.

Section 1. Request for Amnesty. Each insurer wishing to apply for approval to reenter this state to engage in health insurance business in accordance with 1998 RS HB 315 Section 8 shall provide the following to the Commissioner of Insurance:

- (1) A copy of the original notice from the insurer to the department notifying the department of the insurer's withdrawal from the health insurance market;
- (2) A statement identifying any existing health benefit plan in Kentucky and describing the health benefit plan by stating whether the plan is:
  - (a) Individual;
  - (b) Small group;
  - (c) Large group; or
  - (d) An association;
- (3) A statement identifying in which of the following markets the insurer intends to participate:
  - (a) Individual;
  - (b) Guaranteed Acceptance Program;
  - (c) Small group;
  - (d) Large group; or
  - (e) Association;
- (4) If the insurer will be utilizing a network, a description of the service area;
- (5) A description of the method of distribution for each product that will be marketed;
- (6) A statement indicating the anticipated date for marketing new plans; and
- (7) A copy of the insurer's audited financial statement for the three (3) years prior to the insurer's request for amnesty.

Section 2. (1) An insurer's anticipated date for marketing new plans shall not be more than ninety (90) days after the insurer's request for reentry into the health insurance market.

(2) Prior to the expiration of the ninety (90) day period in subsection (1) of this section, the insurer shall file the following with the department of Insurance:

- (a) Rates for each product to be marketed;
- (b) Each form that will be utilized for each product; and
- (c) An affidavit from an officer of the company attesting to the fact that the company will be actively marketing each product for which rates and forms were filed with the department.

(2) The receipt by the Department of Insurance of a request for amnesty tolls the deadline for returning to the health insurance market provided that all information required pursuant to Section 1 of this administrative regulation is received by the department within

two (2) weeks of the date the request for amnesty is received.

Section 3. Approval for amnesty. (1) The commissioner shall not approve an insurer's request for amnesty pursuant to 1998 RS HB 315 Section 8 if:

(a) The commissioner has not received all information required by Section 1 of this administrative regulation; and

(b) The insurer is prohibited by 42 USC 300gg Section 2742 from reentering the health insurance market in this state.

(2) The commissioner shall notify each insurer, in writing, of the decision to approve or disapprove the insurer's request for amnesty pursuant to 1998 RS HB 315 Section 8.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

GALE PEARCE, General Counsel

CONTACT PERSON: Sharron S. Burton, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 215, Frankfort, Kentucky 40601, PH: (502) 564-6032, FAX: (502) 564-1456.

APPROVED BY AGENCY: July 1, 1998

FILED WITH LRC: July 2, 1998 at 8 a.m.

REGULATORY IMPACT ANALYSIS

Contact Person: Sharron Burton

(1) Type and number of entities affected: This administrative regulation affects the approximately 34 insurers that, on or after July 15, 1995, until April 10, 1998, issued standard health benefit plans under KRS 304.17A-160 and then ceased doing business in Kentucky.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Insurer's requesting to reenter the Kentucky health insurance market will be required to submit information to the commissioner regarding the products to be marketed, the method of product distribution, description of the service areas to be utilized, financial status, a copy of the original notice of withdrawal, and a description of any existing health benefit plan in Kentucky. The insurer approved to reenter the Kentucky market must also file rates and forms for the products to be marketed.

2. Second and subsequent years: Insurer's may request reentry into the Kentucky health insurance market until January 1, 1999. Each insurer requesting reentry into the Kentucky market will be required to file the information outlined in the administrative regulation until the January 1, 1999, deadline.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The Department of Insurance will be required to review the information submitted by insurers requesting to reenter the Kentucky health insurance market. The department must also determine whether an insurer's request to reenter the Kentucky market should be approved or disapproved.

(4) Assessment of anticipated effect on state and local revenues: The department does not anticipate that there will be any effect on state and local revenues caused by the implementation of this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The budget for the Department of Insurance will be used to implement and enforce this ad-

ministrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: The department has received no public comments regarding this issue.

(b) Kentucky: The department has received no public comments regarding this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: 1998 RS HB 315 requires the Commissioner of Insurance to approve or disapprove an insurer's request to reenter the Kentucky health insurance market. In order to appropriately evaluate whether or not an insurer should be permitted to reenter the Kentucky market, the commissioner must establish criteria and filing requirements for the insurer. Also, this administrative regulation was necessary in order to clarify any perceived conflict between 1998 RS HB 315 and 42 USC 300gg Section 2742. No other alternatives were considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will benefit public health by affording insurers an opportunity to reenter the Kentucky health insurance market. This will increase the availability of health insurance products to the public.

(b) State whether a detrimental effect on environment and public health would result if not implemented: If this administrative regulation were not implemented, a detrimental effect on public health may result.

(c) If detrimental effect would result, explain detrimental effect: If this administrative regulation were not implemented, the commissioner would have little information on which to base his decision whether to approve or disapprove an insurer's request to reenter the Kentucky health insurance market. Also, if this administrative regulation were not implemented, there might exist a conflict between the reentry provisions in 1998 RS HB 315 and those in 42 USC 300gg Sec. 2742.

(9) Identify any statute, administrative regulation or government policy that may be in conflict, overlapping, or duplication: Absent this administrative regulation, there is a potential conflict between the federal and the state reentry provisions.

(a) Necessity of proposed regulation if in conflict: This administrative regulation clarifies that all insurers must meet the provisions contained in 42 USC 300gg Sec. 2742 in addition to the reentry provisions contained in 1998 RS HB 315.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: This administrative regulation eliminates the potential conflicting provisions contained in 42 USC 300gg Sec. 2742 and 1998 RS HB 315.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applied since this administrative regulation applies to all insurers that, on or after July 15, 1995, until April 10, 1998, issued standard health benefit plans under KRS 304.17A-160 and then ceased doing business in Kentucky.

#### STATEMENT OF EMERGENCY 904 KAR 2:490E

This emergency administrative regulation is necessary to enable the Cabinet for Families and Children to establish eligibility requirements for the Welfare to Work Grant Program. The purpose of the Welfare to Work Grant Program is to provide transitional assistance to hard-to-employ present and former welfare recipients living in high poverty areas thus enabling them to move into unsubsidized employment and economic self-sufficiency. In order to receive formula funds, states are required to submit a state plan for the administration of the Welfare to Work Grant. States are also required to have their programs implemented by July 31, 1998. The provisions for Kentucky's Welfare to Work Grant Program are included in this emergency regulation. In order to implement the mandated provisions of 42 USC 601 et seq. by July 31, 1998, and to prevent

the loss of federal funds, this emergency administrative regulation must be filed. An ordinary administrative regulation would not allow sufficient time to meet the time frames. This emergency administrative regulation will be replaced by an ordinary administrative regulation.

PAUL E. PATTON, Governor  
VIOLA P. MILLER, Secretary

#### CABINET FOR FAMILIES AND CHILDREN Department for Social Insurance Division of Management & Development

#### 904 KAR 2:490E. Welfare to Work Grant Program.

RELATES TO: 42 USC 601 et seq.

STATUTORY AUTHORITY: KRS 194.050(1), 205.200(2), 42 USC 601 et seq., HB 132 (1998)

EFFECTIVE: June 22, 1998

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Families and Children is required to administer the public assistance programs. KRS 205.200(2) requires that the conditions of eligibility to receive Kentucky Transitional Assistance Program (K-TAP) money grants be prescribed by administrative regulations in conformity with 42 USC 601 et seq. and federal regulations. This administrative regulation is necessary to enable the Cabinet for Families and Children to qualify to receive federal funds under the Welfare to Work Grant Program in accordance with 20 CFR Part 645 of the Social Security Act, Title IV, Part A, as amended by the Balanced Budget Act of 1997.

Section 1. Definitions. (1) "Cabinet" means the Cabinet for Families and Children.

(2) "Characteristics associated with long-term welfare dependence" means the following traits as defined in this section:

- (a) School dropout;
- (b) Teen pregnancy;
- (c) Poor work history; or
- (d) Requires substance abuse treatment for employment.

(3) "Community service" means a work assignment with a public or private nonprofit agency, which provides a public service, and assists a participant to move promptly into regular public or private employment.

(4) "Has not completed secondary school" means an individual who has not graduated from high school or obtained a certificate of general equivalency, and has skills in reading or mathematics at the 8.9 grade level or below.

(5) "Job creation through wage subsidies" means the establishment of new jobs through the expansion of an existing industry, the introduction of a new industry, or the establishment of self-employment opportunities in a community, in which the wages of the participant who is placed in a newly created job are subsidized for a specific period of time.

(6) "Kentucky Transitional Assistance Program (K-TAP)" Kentucky's Temporary Assistance for Needy Families (TANF) Program, means a money payment program for children pursuant to 904 KAR 2:006, Section 1.

(7) "Labor market deficiencies" means the following traits as defined in this section:

- (a) Has not completed secondary school;
- (b) Requires substance abuse treatment for employment; or
- (c) Poor work history.

(8) "Long-term recipient" means a recipient of K-TAP, or its predecessor Aid to Families with Dependent Children, for thirty (30) or more months.

(9) "Noncustodial parent" means the nonrecipient parent of a minor child, whose custodial parent receives K-TAP, and either:

(a) The custodial parent is a long-term recipient and has two (2) of three (3) labor market deficiencies; or

(b) The noncustodial parent personally possesses at least one (1) characteristic associated with long-term welfare dependence.

(10) "Poor work history" means the individual has worked full time (thirty (30) hours or more per week) no more than three (3) consecutive months in the past twelve (12) calendar months.

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

(11) "Private Industry Council (PIC)" means a council established under Section 102 of the Job Training Partnership Act.

(12) "On-the-job training" means a participant is hired by a private or public employer and receives job training or skills essential to the full and adequate performance of that job.

(13) "Requires substance abuse treatment for employment" means a person for whom a community mental health center professional has performed a formal substance abuse assessment and recommended a treatment plan.

(14) "School dropout" means a person who is at least seventeen (17) years of age, has not achieved high school graduation or equivalency, and is not enrolled or has quit attending high school or equivalent training (other than a regular holiday or school break period).

(15) "Teen pregnancy" means a person less than age twenty (20) who is currently pregnant or a person of any age who gave birth prior to age twenty (20).

(16) "Welfare to work" means a program which assists long-term welfare recipients with labor market deficiencies, welfare recipients who have characteristics associated with long-term welfare dependence, or noncustodial parents of welfare recipient children who are hard to employ become self-sufficient.

(17) "Work experience" means a work assignment with a public or private employing entity for a participant who needs assistance in becoming accustomed to basic work requirements and is designed to promote the development of good work habits and basic work skills for those who have never worked or who have been out of the labor force for an extended period of time.

Section 2. Program Participation. The Welfare to Work Grant Program shall target:

(1) A long-term welfare recipient with at least two (2) of three (3) labor market deficiencies which include:

- (a) Has not completed secondary school;
- (b) Requires substance abuse treatment for employment, or
- (c) Has a poor work history.

(2) A welfare recipient who has characteristics associated with long-term welfare dependence as defined in Section 1(2) of this administrative regulation.

(3) A noncustodial parent of a minor whose custodial parent is described in subsection (1) of this section or who personally possesses at least one (1) characteristic associated with long-term welfare dependence as defined in Section 1(2) of this administrative regulation.

(4) A former K-TAP recipient who becomes ineligible due to benefit time limits pursuant to 904 KAR 2:006.

Section 3. Allowable Activities. (1) Welfare to Work Grant Program funds may be used for the following activities:

- (a) Job readiness activities with public or private providers.
- (b) Employment activities which consist of any of the following:
  1. Community service;
  2. Work experience;
  3. Job creation through wage subsidies; and
  4. On-the-job training.
- (c) Job placement services with public or private providers.

(d) Postemployment services which are provided after an individual is placed in one (1) of the employment activities listed in paragraph (b) of this section, or in any other subsidized or unsubsidized job. Postemployment services shall include:

1. Basic educational skills training;
2. Occupational skills training;
3. English as a second language training; and
4. Mentoring.

(e) Job retention services and support services which are provided after an individual is placed in a job readiness activity, in one (1) of the employment activities, or in any other subsidized or unsubsidized job. These services may be provided with Welfare to Work Grant Program funds only if they are not otherwise available to the participant. Job retention and support services include:

1. Transportation assistance;
2. Substance abuse treatment (except Welfare to Work Grant Program funds may not be used to provide medical treatment);
3. Child care assistance;

4. Emergency or short-term housing assistance; and

5. Other supportive services necessary to assure success in employment.

(f) Individual development accounts which are established in accordance with Section 404(h) of the Social Security Act.

(2) Intake, assessment, eligibility determination, development of an individualized service strategy, and case management may be incorporated in the design of any of the allowable activities listed in subsection (1) of this section.

(3) Welfare to Work Grant Program job readiness, job placement and employment activities are designed to meet the K-TAP participation requirements in accordance with 904 KAR 2:370.

Section 4. Duration of Service. A participant in the Welfare to Work Grant Program shall remain eligible for Welfare to Work services until the conclusion of the service period if the participant becomes ineligible for K-TAP benefits during participation, provided that K-TAP participation requirements are met.

Section 5. Hearing Rights. Hearing rights for the Welfare to Work Grant Program shall be the same as hearing rights for a K-TAP recipient pursuant to 904 KAR 2:055.

DIETRA PARIS, Interim Commissioner

VIOLA P. MILLER, Secretary

CHARLES P. LAWRENCE, Attorney

APPROVED BY AGENCY: June 17, 1998

FILED WITH LRC: June 22, 1998 at 2 p.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Marty Mason, Director

(1) Type and number of entities affected: The affected entities are families who receive assistance under the Temporary Assistance for Needy Families (TANF) block grant program called Kentucky Transitional Assistance Program (K-TAP), certain noncustodial parents of minors whose custodial parents are welfare recipients and former K-TAP recipients. The funding to implement the Welfare to Work Grant Program is included in Title IV-A. As of March 1998, there were a total of 52,509 K-TAP cases. In March 1998, there were approximately 37,754 adults in those cases and 1,147 unemployed parent cases with 2,275 adults in those cases.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the publication of the Notice of Intent.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: To be determined after the publication of the Notice of Intent.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing cost (note any effects upon competition) for the:

1. First year following implementation: Compliance, reporting and paperwork requirements should not affect K-TAP recipients required to participate in Kentucky Works. Compliance, reporting and paperwork requirements for non-K-TAP recipients should be minimal.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings to the agency:

1. First year: New federal funds \$17,722,913 for FFY 1998. Funds must be expended between 4/23/98 and 4/22/2001. A state match of \$8,861,457 is required and available from General Funds carry forward authorized by the 1998 General Assembly.

2. Continuing cost or savings: same

3. Additional factors increasing or decreasing cost: None

(b) Reporting and paperwork requirements: Quarterly financial reports to the United States Department of Labor; Quarterly participant reports to United States Department of Health and Human Services. Report formats have not yet been officially issued.

(4) Assessment of anticipated effect on state and local revenues: To be determined after the publication of the Notice of Intent.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal funds and state funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be determined after the publication of the Notice of Intent.

(b) Kentucky: To be determined after the publication of the Notice of Intent.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since the state is responsible under federal requirements to implement the requirements for the program funded under 42 USC 601 et seq.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The anticipated effect is that hard-to-employ present and former welfare recipients living in high poverty areas will obtain the skills necessary to obtain unsubsidized employment and to become economically self-sufficient.

(b) State whether a harmful effect on environment and public health would result if not implemented: A detrimental effect on public welfare would result if this new administrative regulation is not implemented.

(c) If detrimental effect would result, explain detrimental effect: Failure to implement the mandated provisions of 42 USC 601 et seq. by July 31, 1998, would result in loss of federal funds.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None

(10) Any additional information or comments: This administrative regulation will provide transitional assistance to hard-to-employ present and former welfare recipients living in high poverty areas and help them move into unsubsidized employment and become economically self-sufficient.

(11) TIERING: Is tiering applied? Yes. Federal regulations require that 70 percent of federal grant funds be spent on long-term recipients; up to 30 percent may be spent on those with characteristics associated with long-term welfare dependence.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 42 USC 601 et seq.
2. State compliance standards. KRS 205.200
3. Minimum or uniform standards contained in the federal mandate. None
4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. No
5. Justification for the imposition of the stricter standards, or additional or different responsibilities or requirements. None

#### STATEMENT OF EMERGENCY 907 KAR 1:025E

This emergency administrative regulation is being promulgated to: (a) Provide a payment increase for services provided to Kentucky's Medicaid eligible individuals who are elderly and disabled; and (b) Protect the health and welfare of these most vulnerable citizens. This action must be taken on an emergency basis in order to enact budgetary provisions, effective July 1, 1998, in accordance with HB 321 of the 1998 General Assembly. Failure to enact this administrative regulation on an emergency basis would pose an imminent threat to the public health, safety or welfare of Medicaid recipients. This emergency administrative regulation differs from the emergency administrative regulation on the same subject matter that was filed on February 18, 1998 as follows: provides the process for enacting the Medicaid reimbursement cap specific to nursing facilities

and the related facilities for the state fiscal year 1999 and state fiscal year 2000. This process also includes a revised methodology for monitoring and adjusting rates. This emergency administrative regulation shall be replaced by an ordinary administrative regulation filed with the Regulations Compiler.

PAUL E. PATTON, Governor  
JOHN H. MORSE, Secretary

#### CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Administration and Development

#### 907 KAR 1:025E. Payments for nursing facility and intermediate care facility for the mentally retarded services.

RELATES TO: KRS 42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 456, 42 USC 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s [205-520]

STATUTORY AUTHORITY: KRS 194.050, 205.520, HB 132 1998 GA [42 CFR 430, 431, 432, 433, 435, 440, 441, 442, 447, 455, 456; 42 USC 1396a, b, c, d, g, i, l, n, o, p, r, r-2, r-3, r-5, s;]

EFFECTIVE: June 30, 1998

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services [Human Resources] has responsibility to administer the Medicaid Program. House Bill 132 of the 1998 General Assembly reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services. KRS 205.520 empowers the cabinet by administrative regulation, to comply with any requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation sets forth the method for determining amounts payable by the Medicaid Program [cabinet] for nursing care facility services and intermediate care facility for the mentally retarded services.

Section 1. Definitions. (1) "All other costs" means other care-related costs, other operating costs, capital costs, and indirect ancillary costs.

(2) "Allowable cost" means that portion of the facility's cost which may be allowed by the department [cabinet] in establishing the reimbursement rate. Cost shall be considered allowable if the item of supply or service is necessary for the provision of the appropriate level of patient care and the cost incurred by the facility is within cost limits established by the department [cabinet], i.e., the allowable cost is "reasonable."

(3) "Ancillary services" means those direct services for which a separate charge is customarily made, and which, except for ventilator therapy services, and brain injury unit services are retrospectively settled on the basis of reasonable allowable cost at the end of the facilities' fiscal year. Ancillary services shall be limited to the following:

- (a) Physical, occupational and speech therapy;
- (b) Laboratory procedures;
- (c) X-ray;
- (d) Oxygen and other related oxygen supplies;
- (e) Respiratory therapy (excluding the routine administration of oxygen);
- (f) Psychological and psychiatric therapy (for intermediate care facilities for the mentally retarded only); and
- (g) Ventilator therapy services, subject to the coverage limitations shown in the Nursing Facility Reimbursement Manual.

(4) "Basic per diem cost" means for each major cost category (nursing services costs and all other costs) shall be the computed rate arrived at, if [when] otherwise allowable costs are trended and adjusted in accordance with the inflation factor, the occupancy factor, and the median cost center per diem upper limits.

(5) "Calculated rate" means the rate effective July 1, 1998 for nursing facilities, nursing facilities with mental retardation specialty and hospital-based facilities.

(6) "Department" means the Department for Medicaid Services or its designee.

(7) "Hospital based nursing facilities" means those nursing facilities in the same building with or attached to an acute care hospital and

which share common administration, nursing staff, and ancillary services with the hospital; however, those facilities classified as hospital based skilled nursing facilities on June 30, 1989 shall remain classified as hospital based nursing facilities.

(8) [(6)] "Incentive factor" means the comparison of the basic per diem cost (for facilities qualifying for a cost savings incentive) with the upper limit for the appropriate cost arrays using the cost savings incentive (CSI) percentage (and taking into consideration the maximum allowable CSI amount for each cost array) to arrive at the actual dollar amount of cost savings incentive return to be added to the basic per diem cost.

(9) [(7)] "Inflation factor" means the comparison of allowable routine service costs, not including fixed or capital costs, with an inflation rate to arrive at projected current year cost increases, which when added to allowable costs, including fixed or capital costs, yields projected current year allowable costs.

(10) [(8)] "ICF-MRs" means intermediate care facilities for the mentally retarded.

(11) [(9)] "Maximum allowable cost" means the maximum amount which may be allowed to a facility as reasonable cost for provision of an item of supply or service while complying with limitations expressed in related federal or state regulations.

(12) [(10)] "Necessary function" means that had the owner not rendered services pertinent to the operation of the institution, the institution would have had to employ another person to perform the service.

(13) [(11)] "Nursing facilities with waiver (NFs-W)" means facilities certified to the Medicaid Program by the state survey agency as meeting all NF requirements except the nurse staffing requirement for which an NF waiver has been granted by the survey agency.

(14) [(12)] "Nursing facility (NFs)" means a facility certified to the Medicaid Program by the state survey agency as meeting all nursing facility requirements, and [in] at least twenty (20) percent of the facility's Medicaid participating beds (but not less than ten (10) beds) shall participate [meeting all conditions of participation] in the Medicare Program. The phrase "nursing facility" also includes a nursing facility with waiver, as provided for in 42 USC 1396r(b)

(4)(C)(ii), unless the context specifies otherwise.

(15) [(13)] "Nursing facility with a mental retardation specialty" (NF-MRS) means a nursing facility in which at least fifty-five (55) percent of the patients have demonstrated special needs relating to the diagnosis of mental retardation.

(16) [(14)] "Nursing services costs" means the direct costs associated with nursing services.

(17) [(15)] "Occupancy factor" means the imposition of an assumed level of occupancy used in computing unadjusted basic per diem rates.

(18) [(16)] "PRO" means peer review organization.

(19) [(17)] "Prospective rate" means a payment rate of return for routine services based on allowable costs and other factors, and includes the understanding that except as specified the prospective rate shall not be retroactively adjusted, either in favor of the facility or the department [cabinet].

(20) "Quarterly rate sheet" means the notice sent to each nursing facility each calendar quarter which provides information pertaining to the quarterly case mix and resultant prospective payment rate adjustment for a facility.

(21) "Rate on rate" means the methodology of establishing a reimbursement rate by multiplying an existing rate by one (1) plus a percent of increase as determined by the department in accordance with the biennial budget.

(22) [(18)] "Routine services" means the regular room, dietary, medical social services, nursing services, minor medical and surgical supplies, and the use of equipment and facilities. Routine services shall include the following:

(a) All general nursing services, including administration of oxygen and related medications, handfeeding, incontinency care and tray services;

(b) Items which are furnished routinely and relatively uniformly to all patients, such as patient gowns, water pitchers, basins and bed pans. Personal items such as paper tissues, deodorants, and mouth-washes shall be allowable as routine services if generally furnished to all patients;

(c) Items stocked at nursing stations or on the floor in gross supply

and distributed or utilized individually in small quantities, such as alcohol, applicators, cotton balls, band-aids and tongue depressors;

(d) Items which are utilized by individual patients but which are reusable and expected to be available in an institution providing a nursing facility level of care, such as ice bags, bed rails, canes, crutches, walkers, wheelchairs, traction equipment, and other durable medical equipment;

(e) Laundry services including personal clothing to the extent it is the normal attire for everyday facility use, but excluding dry cleaning costs; and

(f) Other items or services generally available or needed within a facility unless specifically identified as ancillary services. (Items excluded from reimbursement include private duty nursing services and ambulance services costs.)

(23) [(19)] "Upper limit" means the maximum level at which the department [cabinet] shall reimburse, on a facility by facility basis, for routine services.

Section 2. Reimbursement for Nursing Facilities, [(NFs)-(]Including Nursing Facilities with Waiver[)] and Intermediate Care Facilities for the Mentally Retarded (ICF-MRs). (1) All nursing facilities, [(NFs)-(]including nursing facilities with waiver[)] or intermediate care facilities for the mentally retarded (ICF-MRs) participating in the Medicaid Program shall be reimbursed in accordance with this administrative regulation.

(2) Payments made shall be in accordance with the requirements set forth in 42 CFR 447.250 through 42 CFR 447.280 and the coverage requirements specified in 907 KAR 1:022[~~-, Nursing facility and intermediate care facility for the mentally retarded services~~].

(3)(a) A nursing facility desiring to participate in Medicaid shall be required to have at least twenty (20) percent of its Medicaid participating beds [(]but not less than ten (10) beds participate in the Medicare Program. [~~for~~] A facility with less than ten (10) beds, shall have all beds[)] participate in the Medicare Program unless the nursing facility has been granted a waiver of the nursing facility nurse staffing requirement and, as a result, cannot participate in Medicare.

(b) If a nursing facility with waiver chooses to participate in the Medicare Program, the facility shall be required to have at least twenty (20) percent of its Medicaid participating beds [(]but not less than ten (10) beds. [;] If the facility has less than ten (10) beds, all beds shall [)] participate in the Medicare Program.

(4) The Medicaid Program does not recognize multilevel nursing facilities, and therefore all participating beds in nursing facilities (including nursing facilities with waiver but not including ICF-MRs) shall be reimbursed at the same rate established for the entire facility.

Section 3. Basic Principles of Reimbursement. (1) Payment shall be on the basis of rates which have been determined by the department [cabinet] to be reasonable and adequate to meet the costs which are required to be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable state and federal laws, regulations, and quality and safety standards, in accordance with the requirements set forth in 42 USC 1396(a)(13)(A).

(2) Payment amounts shall be arrived at by application of the reimbursement principles developed by the department [cabinet] and contained in the [Kentucky-Medicaid-Program] Nursing Facility Reimbursement Manual[~~-, revised July 1, 1995 which is incorporated by reference in this administrative regulation and supplemented by the use of the Medicare reimbursement principles. The Kentucky Medicaid Program Nursing Facility Reimbursement Manual may be reviewed during regular working hours (8 a.m. to 4:30 p.m. eastern standard time) in the Office of the Commissioner, Department for Medicaid Services, 275 East Main Street, Frankfort, Kentucky 40621. Copies may also be obtained from that office upon payment of the appropriate fee allowed by 200 KAR 1:020~~].

Section 4. Implementation of the Payment System. The department's [cabinet's] reimbursement system shall be supported by the Medicare Principles of Reimbursement, with the system utilizing the principles as guidelines in unaddressed policy areas. The [cabinet's] reimbursement system shall include the following specific policies, components or principles:

(1) Prospective payment rates for routine services shall be set by the department [cabinet] on a facility by facility basis, and shall not be



subject to retroactive adjustment except as specified in this section of the administrative regulation, including the provisions contained in subsections (13) and (14) of this section.

(a) Prospective rates shall be cost based annually, and may be revised on an interim basis in accordance with procedures set by the department [cabinet].

(b) An adjustment to the prospective rate (subject to the maximum payment for that type of facility) shall be considered only if a facility's increased costs are attributable to one (1) of the following reasons:

1. Governmentally imposed minimum wage increases;
2. The direct effect of new licensure requirements or new interpretations of existing requirements by the appropriate governmental agency as issued in administrative regulation or written policy which affects all facilities within the class; or
3. Other governmental actions that result in an unforeseen cost increase.

(c)1. The amount of any prospective rate adjustment shall not exceed that amount by which the cost increase resulting directly from the governmental action exceeds on an annualized basis the inflation allowance amount included in the prospective rate for the general cost area in which the increase occurs. For purposes of this determination, costs shall be classified into two (2) general areas, salaries and other.

2. The effective date of interim rate adjustment shall be the first day of the month in which the adjustment is requested or in which the cost increase occurred, whichever is later.

(2)(a) The prospective rate shall not exceed, on a facility by facility basis, an administratively established maximum payment for that type of facility as applicable (except that ICF-MRs shall have no administratively set upper limit).

(b)1. The state shall set a uniform rate year for NFs and ICF-MRs (July 1 - June 30) by taking the latest available cost data which are [is] available as of May 16 of each year and trending the facility costs to July 1 of the rate year. If the latest available cost report data has not been audited or desk reviewed prior to rate setting for the universal year beginning July 1, the [with] prospective rates based on cost reports which are not audited or desk reviewed shall be subject to adjustment when the audit or desk review is completed.

2. [Appropriate cost report adjustments shall be made for the period between July 1, 1990 and October 1, 1990 to account for the fact a nursing facility rate adjustment related to nursing home reform shall be made effective October 1, 1990.

3.] Partial year, or budgeted cost data may be used if a full year's data is unavailable. Unaudited reports shall be subject to adjustment to the audited amount.

(c) Facilities paid on the basis of partial year or budgeted cost reports shall have their reimbursement settled back to allowable cost, with usual upper limits applied.

(d) Facilities whose rates are subject to settlement back to cost will not be included in the arrays until the facilities are no longer subject to cost settlement.

(e) The following specific policies shall be used with regard to determination, application, and exclusion from upper limits.

1. Nursing facility arrays. For purposes of setting upper limits the freestanding NFs (exclusive of the NF-mental retardation specialty [MRs], NF-institutions for mental disease, and NF-pediatric facilities) shall be divided into urban and rural arrays.

a. The urban array shall include all facilities within a standard metropolitan statistical area.

b. The rural array shall include all facilities in nonstandard metropolitan statistical area counties.

c. For purposes of arraying, current multilevel facilities (i.e., NF and ICF) shall be considered as one (1) facility, and the composite or overall rate for the facility shall be paid for services rendered in either level during the period of time preceding the first survey agency occurring on or after October 1, 1990 (with separate levels ceasing to exist for Medicaid purposes at the time of the first survey).

d. The urban and rural arrays shall be further broken down into a nursing cost center array and an "other cost center" array for each.

2. Nursing facility upper limits. The following NF upper limits shall be applied:

a. The upper limit for nursing costs for freestanding NFs shall be set at 115 percent of the median of the array of each facility's cost per case mix unit (urban or rural as applicable). The upper limit for "other costs" for freestanding NFs shall be set at 115 percent of the median

of the allowable per diem cost array for the facilities (urban or rural as applicable);

b. The upper limit for hospital based nursing facilities shall be set at 125 percent of the appropriate upper limit for freestanding facilities; and

c. The upper limit for NF-MRs shall be set at 120 percent of the appropriate upper limit for freestanding facilities.

3. Exclusions from nursing facility upper limits. The following exclusions from usual NF payment methodology and upper limits shall be applied.

a. Nursing facilities designated as institutions for mental diseases or as pediatric facilities shall be reimbursed at full reasonable and allowable prospective cost;

b. Hospital swing beds shall be paid at the average of NF payments for the preceding calendar year. The swing bed rates shall change effective January 1, 1991 and each January 1 thereafter;

c. ~~[Hospital dual licensed beds shall be paid at the hospital-based facility upper limits;~~

d.] Facilities recognized as providing distinct part ventilator dependent care shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate. A distinct part ventilator unit of not less than twenty (20) beds shall be required with a requirement that the facility have a ventilator patient census of at least fifteen (15) patients. The patient census shall be based upon the quarter preceding the beginning of the rate year, or upon the quarter preceding the quarter for which certification is requested if the facility did not qualify for participation as a distinct part ventilator care unit at the beginning of the rate year. The fixed rate for hospital-based facilities shall be \$460 per day, and the fixed rate for freestanding facilities shall be \$250 per day. The rates shall be increased or decreased based on the Data Resources, Inc. rate of inflation indicator for the nursing facility services for each rate year beginning with the July 1, 1997 rate year. Costs of distinct part ventilator nursing facility units shall be excluded from allowable cost for purposes of rate setting and settlement of nursing facility cost reports; and

d. [which shall be equal to projected costs; and

e.] Facilities which are Medicaid certified head injury units providing preauthorized specialized rehabilitation services for persons with brain injuries shall be paid at an all-inclusive (excluding drugs which shall be reimbursed through the pharmacy program) fixed rate which shall be set at \$360 per diem. Facilities providing preauthorized specialized rehabilitation services for persons with brain injuries with rehabilitation complicated by neurobehavioral sequelae shall be paid an all-inclusive (excluding drugs) negotiated rate which shall not exceed the facilities' usual and customary charges.

4. Other factors relating to costs and upper limit determination shall be:

a. If the department [cabinet] has made a separate rate adjustment as compensation to the facilities for minimum wage updates, the department [cabinet] shall then adjust downward trending and indexing factors to the extent necessary to remove from the factors costs relating to the minimum wage updates already provided for by the separate rate adjustment. The purpose of the adjustment to the factors shall be to avoid paying the facilities twice for the same costs. If the trending and indexing factors include costs related to a minimum wage increase, the department [cabinet] shall not make a separate rate adjustment, and the minimum wage costs shall not be deleted from the trending and indexing factors.

b. The allowable per diem cost for NFs (excluding swing beds, dual licensed hospital beds, and facilities with all inclusive rates) shall include (through June 30, 1991) thirty-eight (38) cents for nurse aide training; and one (1) dollar and thirty-eight (38) cents for implementation of universal precautions for disease control; and four (4) cents for medical director costs; these allowable cost amounts shall not be subject to adjustment or cost settlement.

c. A special access and treatment fee shall be added to the facility per diem (without regard to upper limits) for each individual identified as having care needs associated with high infectious or communicable diseases with limited treatment potential, such as hepatitis B, methicillin-resistant staphylococcus aureus (MRSA), acquired immune deficiency syndrome (AIDS), or who test positive for human immunodeficiency virus (HIV).

d. The maximum payment amounts for the prospective uniform



rate year shall be adjusted each July 1 so that the maximum payment amount in effect for the rate year shall be related to the cost reports used in setting the facility rates for the rate year.

e. For purposes of administrative ease in computations, normal rounding may be used in establishing the maximum payment amount, with the maximum payment amount rounded to the nearest five (5) cents. Upon being set, the arrays and upper limits shall not be altered due to revisions or corrections of data except as specified in this subsection.

(3) The reasonable direct cost of ancillary services provided by the facility as a part of total care shall be compensated on a reimbursement cost basis as an addition to the prospective rate except for ventilator therapy and brain injury unit services which shall be paid on the basis of all-inclusive rates.

(a) Ancillary services reimbursement shall be subject to a year-end audit, retroactive adjustment and final settlement.

(b) Ancillary costs may be subject to maximum allowable cost limits under federal regulations.

(c) Any percentage reduction made in payment of current billed charges shall not exceed twenty-five (25) percent, except:

1. In the instance of individual facilities where the actual retroactive adjustment for a facility for the previous year reveals an overpayment by the department [cabinet] exceeding twenty-five (25) percent of billed charges; or

2. Where an evaluation by the department [cabinet] of an individual facility's current billed charges shows the charges to be in excess of average billed charges for other comparable facilities serving the same area by more than twenty-five (25) percent.

(4) Interest expense used in setting the prospective rate shall be an allowable cost if permitted under Medicare principles and if it meets these additional criteria:

(a) It represents interest on long-term debt existing at the time the vendor enters the program or represents interest on any new long-term debt, the proceeds of which are used to purchase fixed assets relating to the provision of the appropriate level of care. If the debt is subject to variable interest rates found in balloon-type financing, renegotiated interest rates shall be allowable. The form of indebtedness may include mortgages, bonds, notes and debentures when the principal is to be repaid over a period in excess of one (1) year; or

(b) It is other interest for working capital and operating needs that directly relate to providing patient care. The form of the indebtedness may include notes, advances and various types of receivable financing;

(c) For both paragraphs (a) and (b) of this subsection, interest on a principal amount used to purchase goodwill or other intangible assets shall not be considered an allowable cost.

(5) Compensation to owner/administrators shall be considered an allowable cost provided that it is reasonable, and that the services actually performed are a necessary function.

(a) Compensation shall include the total benefit received by the owner for the services he renders to the institution, excluding fringe benefits routinely provided to all employees and the owner/administrator.

(b) Payment for services requiring a licensed or certified professional performed on an intermittent basis shall not be considered a part of compensation. Reasonableness of compensation shall be based on total licensed beds (all levels).

(c) Compensation for owners and nonowner administrators (except for nonowner administrators of intermediate care facilities for the mentally retarded and dual licensed pediatric facilities) shall not exceed the amounts specified in the Nursing Facility Reimbursement Manual.

(6) The allowable cost for services or goods purchased by the facility from related organizations shall be the cost to the related organization, except if [when] it can be demonstrated that the related organization is in fact equivalent to any other second party supplier, i.e., a relationship for purposes of this payment system is not considered to exist. A relationship shall be considered to exist if [when] an individual (or individuals) possesses five (5) percent or more of ownership or equity in the facility and the supplying business. However, an exception to the relationship shall be determined to exist if [when] fifty-one (51) percent or more of the supplier's business activity of the type carried on with the facility is transacted with persons and organizations other than the facility and its related organizations.

(7) The amount allowable for leasing costs shall not exceed the amount which would be allowable based on the computation of historical costs, except that for nursing facilities entering into lease/rent arrangements as intermediate care facilities prior to April 22, 1976, intermediate care facilities for the mentally retarded entering into lease/rent arrangements prior to February 23, 1977, and nursing facilities entering into lease/rent arrangements as skilled nursing facilities prior to December 1, 1979, the department [cabinet] shall determine the allowable costs of these arrangements based on the general reasonableness of the costs.

(8) Certain costs not directly associated with patient care shall not be considered allowable costs. Costs which shall not be allowable include political contributions, travel and related costs for trips outside the state (for purposes of conventions, meetings, assemblies, conferences, or any related activities), specified vehicle costs as shown in the [Kentucky Medicaid Program] Nursing Facility Reimbursement Manual, and legal fees for unsuccessful lawsuits against the department [cabinet]. However, costs (excluding transportation costs) for training or educational purposes outside the state shall be [are] allowable costs unless the costs are incurred by administrators or owners.

(9) To determine the gain or loss on the sale of a facility for purposes of determining a purchaser's cost basis in relation to depreciation and interest costs, the following methods shall be used for changes of ownership occurring before July 18, 1984:

(a) Determine the actual gain on the sale of the facility.

(b) Add to the seller's depreciated basis two-thirds (2/3) of one (1) percent of the gain for each month of ownership since the date of acquisition of the facility by the seller to arrive at the purchaser's cost basis.

(c) Gain shall be defined as any amount in excess of the seller's depreciated basis as computed under program policies at the time of the sale, excluding the value of goodwill included in the purchase price.

(d) A sale shall be any bona fide transfer of legal ownership from an owner(s) to a new owner(s) for reasonable compensation, which shall usually be fair market value. Lease-purchase agreements or other similar arrangements which do not result in transfer of legal ownership from the original owner to the new owner shall not be considered sales until legal ownership of the property is transferred.

(e) If an enforceable agreement for a change of ownership was entered into prior to July 18, 1984, the purchaser's cost basis shall be determined in the manner set forth in paragraphs (a) through (d) of this subsection.

(10) Valuation of capital assets.

(a) [No] Increase in valuation in relation to depreciation and interest costs shall not be allowed for changes of ownership occurring after July 18, 1984 and before October 1, 1985 except as shown in subsection (9)(e) of this section with regard to enforceable agreements for a change of ownership entered into prior to July 1, 1984.

(b) For bona fide changes of ownership entered into on or after October 1, 1985 the depreciation and interest costs shall be increased in valuation in accordance with 42 USC 1396a(a)(13)(C) and the Nursing Facility Reimbursement Manual at pages 350.03 - 350.10 and 352.08-352.09 effective for services provided on or after July 1, 1995.

1. The payment increases resulting from the increases in valuation shall be limited to a projected annual amount of \$3,000,000, taking into account Medicaid occupancy from the prior year Medicaid cost report, with the payments made as an add-on to the usual payment rates and not subject to the usual upper limits. If projected add-on payments would otherwise exceed \$3,000,000 on an annual basis the add-on amounts shall be reduced proportionately for each facility, i.e., the same percentage reduction shall be applied to all facilities qualifying for the rate add-on.

2. Facilities qualifying for the rate add-on shall be those facilities with a bona fide change of ownership on or after October 1, 1985 and before the beginning of the rate year for which the add-on is applicable. For the rate year beginning July 1, 1995, the notice of change of ownership and necessary cost data to compute the rate add-on shall be provided to the department by not later than September 30, 1995. For subsequent rate years, the notice of change of ownership and necessary cost data to compute the rate add-on shall be provided to the department by July 31 of the affected rate year.

(11) Each facility shall maintain and make available any records (in a form acceptable to the department [cabinet]) which the depart-

ment [cabinet] may require to justify and document all costs to and services performed by the facility. The department [cabinet] shall have access to all fiscal and service records and data maintained by the provider, including unlimited on-site access for accounting, auditing, medical review, utilization control and program planning purposes.

(12) The following shall apply with regard to the annual cost report required of the facility:

(a) The year-end cost report shall contain information relating to prior year cost, and shall be used in establishing prospective rates and setting ancillary reimbursement amounts;

(b) New items or expansions representing a departure from current service levels for which the facility requests prior approval by the program shall be so indicated with a description and rationale as a supplement to the cost report;

(c) Department [Cabinet] approval or rejection of projections or expansions shall be made on a prospective basis in the context that if expansions and related costs are approved they shall be considered when actually incurred as an allowable cost. Rejection of items or costs shall represent notice that the costs shall not be considered as part of the cost basis for reimbursement. Unless otherwise specified, approval shall relate to the substance and intent rather than the cost projection; and

(d) If [When] a request for prior approval of projections or expansions is made, absence of a response by the department [cabinet] shall not be construed as approval of the item or expansion.

(13) The department [cabinet] shall perform a desk review of each year-end cost report and ancillary service cost to determine the necessity for and scope of a field audit in relation to routine and ancillary service cost. If a field audit is not necessary, the report shall be settled without a field audit. Field audits shall be conducted when determined necessary. A desk review or field audit shall be used for purposes of verifying cost to be used in setting the prospective rate or for purposes of adjusting prospective rates which have been set based on unaudited data; audits may be conducted annually or at less frequent intervals. An audit of ancillary cost shall be conducted as needed.

(14) Year-end adjustments of the prospective rate and a retroactive cost settlement shall be made if:

(a) Incorrect payments have been made due to computational errors (other than the omission of cost data) discovered in the cost basis or establishment of the prospective rate.

(b) Incorrect payments have been made due to misrepresentation on the part of the facility (whether intentional or unintentional).

(c) A facility is sold and the funded depreciation account is not transferred to the purchaser.

(d) The prospective rate has been set based on unaudited cost reports and the prospective rate is to be adjusted based on audited reports with the appropriate cost settlement made to adjust the unaudited prospective payment amounts to the correct audited prospective payment amounts.

(15) The department [cabinet] may develop and utilize methodology to assure an adequate level of care. Facilities determined by the department [cabinet] to be providing less than adequate care may have penalties imposed against them in the form of reduced payment rates.

(16) Each facility shall submit the required data for determination of the prospective rate no later than sixty (60) days following the close of the facility's fiscal year. This time limit may be extended at the specific request of the facility (with the department's [cabinet's] concurrence).

(17) Allowable prior year cost, trended to the beginning of the rate year and indexed for inflation, shall be subject to adjustment based on a comparison of costs with the facility's occupancy rate (i.e., the occupancy factor) as determined in accordance with procedures set by the department [cabinet].

(a) The occupancy rate shall not be less than actual bed occupancy, except that it shall not exceed ninety-eight (98) percent of certified bed days (or ninety-eight (98) percent of actual bed usage days, if more, based on prior year utilization rates).

(b) The minimum occupancy rate shall be ninety (90) percent of certified bed days for facilities with less than ninety (90) percent certified bed occupancy.

1. The department [cabinet] may impose a lower occupancy rate for newly constructed or newly participating facilities, or for existing facilities suffering a patient census decline as a result of a competing

facility newly constructed or opened serving the same area.

2. The department [cabinet] may impose a lower occupancy rate during the first two (2) full facility fiscal years an existing nursing facility participates in the program under this payment system.

(18) Qualifying nursing facilities (but not including swing beds, [dual-licensed hospital beds,] institutions for mental diseases, pediatric facilities, and facilities with all-inclusive rates) shall earn a cost savings incentive.

(a) Facilities qualifying for the cost savings incentive (except for NF-MRSs) shall be those facilities whose rate within the applicable cost array is not in excess of 110 percent of the median of the array.

(b) The cost savings incentive shall be computed at ten (10) percent of the difference between the facility's cost and the upper limit for the array with the cost savings incentive amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array.

(c) NF-MRSs shall qualify for the cost savings incentive if the NF-MRS has costs less than the NF-MRS upper limit, and the cost savings incentive shall be ten (10) percent of the difference between the facility rate and the upper limit for the class of facility with the cost savings incentive amount limited to not more than one (1) dollar and fifty (50) cents per day per facility for each cost array.

(19) Intermediate care facilities for the mentally retarded may qualify for a cost incentive and investment factor (CIIF) allowance based on a comparison of the facility rate with the CIIF schedule shown in this subsection. [No] Return for investment risk shall not be made to nonprofit facilities, and publicly owned and operated facilities shall not receive the incentive or investment return. Cost incentive and investment schedule for intermediate care facilities for the mentally retarded:

(Effective 10-1-90)

Basic Per Diem Cost	Investment Factor Per Diem Amount	Incentive Factor Per Diem Amount
\$ 96.99 & below	\$1.38	\$.87
97.00 -102.99	1.29	\$.75
103.00 -108.99	1.18	\$.62
109.00 -114.99	1.06	\$.47
115.00 -120.99	.92	\$.31
121.00 -126.99	.76	\$.13
127.00 -133.49	*.53	--

\*There is no maximum payment limit for intermediate care facilities for the mentally retarded.

(20) Hold harmless. The NFs (but not including swing beds or dual licensed hospital beds) shall be entitled to a "hold harmless" amount for the period from October 1, 1990 through June 30, 1992.

(a) This hold harmless amount shall be the amount, if any, by which the July 1, 1990 allowable facility rate plus an adjustment for ancillary costs shifted to routine costs (less a nurse aide training per diem allowance of one (1) dollar and twenty (20) cents) exceeds the allowable facility rate as computed on October 1, 1990 and July 1, 1991 (excluding the revised nurse aide training per diem allowance and other per diem add-ons in recognition of OBRA 87 requirements) under the revised reimbursement system.

(b) For hold harmless purposes, the July 1, 1990 rate shall be increased by an inflation allowance using the appropriate data resources, incorporated index for inflation.

(21) An adjustment shall be made to the usual rate for ICF-MRs, institutions for mental diseases, and pediatric facilities to account for those medical supplies, catheters, syringes, and diapers not payable under the pharmacy program (and no longer payable as ancillaries under the nursing facility payment system) which are thus included under the routine cost category.

(22) Case-mix. The nursing costs for each facility shall be divided by the average case weight (as measured by each patient's needs with regard to activities of daily living and special needs using a standardized measurement as shown in the Nursing Facility Reimbursement Manual with a range from one (1.0) (lowest level of intensity) to 4.12 (highest level of intensity) to derive the facility average case unit cost.

(a)[1. The average case weight for the period October 1, 1990 through June 30, 1991 shall be based on Medicaid patient level of care determinations made during the period July 1, 1990 through September 30, 1990 for each facility. (The peer review organization (PRO) shall first determine whether a patient is high-intensity, low-intensity, or neither. For patients meeting patient status (high or low-intensity), the PRO will then determine the case weight).

2.] The average case weight [thereafter] shall be based on all level of care determinations made during the period covered by the cost report (or as appropriate the most recent period available or a projection if a fully or partial cost report is not available).

(b) The facility nursing rate shall be adjusted for each quarter throughout the year and shall be the product of the average case unit cost (subject to upper limits and with the cost savings incentive adjustment as appropriate) times the average case weight for the prior quarter (as determined using standard methodology and point-in-time analysis). The actual facility payment amount for nursing care shall thus be subject to adjustment each calendar quarter based on changes in facility average case weight, though the average case unit cost (based on prior year costs) remains the same.

(23) Nursing home reform costs.

(a) Effective October 1, 1990 and thereafter, facilities shall be required to request preauthorization for costs that must be incurred to meet nursing home reform costs in order to be reimbursed for the costs.

1. The preauthorization request shall show the specific reform action that is involved and appropriate documentation of necessity and reasonableness of cost.

2. Upon authorization by the Medicaid agency, the cost shall be allowable.

3. A request for a payment rate adjustment may then be submitted to the Medicaid agency with documentation of actual cost incurred.

4. The allowable additional amount shall then be added on the facility's rate (effective with the date the additional cost was incurred) without regard to upper limits or the cost savings incentive factor (i.e., the authorized nursing home reform cost shall be passed through at 100 percent of reasonable and allowable cost).

(b) Preauthorization shall not be required for nursing home reform costs incurred during the period July 1, 1990 through September 30, 1990; however, the actual costs incurred shall be subject to tests of reasonableness and necessity and shall be fully documented at time of the request for rate adjustment.

(c) Facilities may request multiple preauthorizations and rate adjustments (add-ons) as necessary for implementation of nursing home reform.

(d) Facility costs incurred prior to July 1, 1990 shall not (except for the costs previously recognized in a special manner, i.e., the universal precautions add-on and the nurse aide training add-on) be recognized as being nursing home reform costs.

(e) The special nursing home reform rate adjustment shall be requested using forms and methods specified by the department [agency].

(f) A nursing home rate adjustment shall be included within the cost base for the facility in the rate year following the rate year for which the adjustment was allowed.

(g) Interim rate adjustments for nursing home reform shall not be allowed for periods after June 30, 1993.

(24) The provider tax on nursing facilities shall be considered allowable cost; for the period of July 1, 1993 through June 30, 1994 appropriate rate adjustment shall be made as a rate add-on, with no offset against the inflation allowance. For subsequent rate periods, the cost basis shall be adjusted as appropriate to reflect the cost of the provider tax.

Section 5. Prospective Rate Computation. The prospective rate for each facility (taking into account the factors described in this administrative regulation and the case mix methodology shown in the Nursing Facility Reimbursement Manual) shall reflect the following:

(1) The adjusted allowable cost for the facility;

(2) Adjustments to allowable cost related to occupancy;

(3) Adjustments to allowable cost related to application of upper limits;

(4) Adjustments to allowable cost related to application of the cost savings incentive factor, or for ICF-MRs, the cost incentive and in-

vestment schedule;

(5) Rates shall be recomputed quarterly based on revisions in the case mix assessment classification which affects the nursing services component as described in the Nursing Facility Reimbursement Manual. [; however,] The cost basis and the upper limits shall be revised annually using the latest available cost reports and assessments from each provider;

(6) Adjustments as appropriate for costs shifted from ancillary to routine;

(7) Nursing home reform adjustments; and

(8) Hold harmless adjustments.

Section 6. Reimbursement Review and Appeal. Participating facilities may appeal department [cabinet] decisions as to application of the general policies and procedures in accordance with 907 KAR 1:671[. Conditions of Medicaid provider participation; enrollment; documentation of services; disclosure, claims processing, withholding overpayments, appeals process, and sanctions].

Section 7. Reimbursement for Required Services Under PASRR. (1) Prior to an admission of any individual, the NF shall conduct a level I PASRR in accordance with 907 KAR 1:755, Section 4.

(2) The department shall reimburse an NF for service delivered to an individual only if the NF complies with the requirements of 907 KAR 1:755.

(3) Failure to comply with 907 KAR 1:755 shall be grounds for termination of the NF's participation in Medicaid.

Section 8. Reimbursement Provisions. (1) With the exceptions of a nursing facility with a certified brain injury unit, a nursing facility with a distinct part ventilator unit, a nursing facility designated as an institution for mental diseases, a nursing facility designated as a mental retardation specialty, a pediatric nursing facility or an intermediate care facility for the mentally retarded, a nursing facility, including a nursing facility with waiver, participating in the Medicaid Program shall be reimbursed in accordance with this administrative regulation.

(2) Payment shall be in accordance with coverage requirements established in 907 KAR 1:022.

Section 9. Prospective Rate Methodology. Nursing facility Medicaid expenditures during the rate year beginning July 1, 1997 and ending June 30, 1998 shall not exceed \$504 million, including appeal and ancillary settlements. In order to ensure that expenditures do not exceed this amount, the department shall:

(1) On a monthly basis, compile a spreadsheet which contains actual data by facility, for each month and year beginning with July 1, 1997 and includes the following items:

(a) Patient days paid;

(b) Routine costs paid;

(c) Ancillary costs paid;

(d) Medicare crossovers paid;

(e) Patient liability collected;

(f) Third party liability collected;

(g) Appeal settlements; and

(h) Year end ancillary settlements.

(2) Compile a detailed listing of licensed nursing facility beds and current approved certificates of need that shall be included in the projected \$504 million budgeted limit.

(3) Distribute monthly the Medicaid spreadsheets containing the data identified in subsection (1) of this section to the Technical Advisory Committee on Nursing Home Care, Advisory Council for Medical Assistance, and Budget Review Subcommittee on Human Resources and, upon request, to other interested parties.

(4) Determine any necessary adjustments to the prospective rate of a nursing facility based upon information made available pursuant to the provisions of this administrative regulation and after an analysis by an independent accounting firm on or after August 1, 1998 if determined necessary by DMS and the Technical Advisory Committee on Nursing Homes.

(a) If nursing facility Medicaid net expenditures during the state fiscal year beginning July 1, 1997 and ending June 30, 1998 exceed the \$504 million budget limit, the ratio of \$504 million to net expen-

ditures shall be applied to proportionately reduce the payments for a nursing facility for the 1998 state fiscal year based upon the total net expenditures for all nursing facilities according to the following formula: \$504 million divided by the total net expenditures for all nursing facilities shall be the proportionate rate adjustment factor. The proportionate rate adjustment factor shall be weighted based upon the number of Medicaid payment cycles which remain through June 30, 1998. The nursing facility's prospective rate multiplied by the proportionate rate adjustment factor shall be the reduced prospective rate for the nursing facility.

(b) The actual reduction shall be reflected as a separate line item on the quarterly rate sheet for a nursing facility, subsequent to the quarterly case-mix adjustment and any applicable rate add-ons.

(c) The reduced prospective rate adjustment shall not be applied to claims with dates of service earlier than January 1, 1998 or later than May 31, 1998.

(5) Determine on or after August 1, 1998 of 1998 state fiscal year end actual Medicaid nursing facility expenditures. If after the August 1, 1998 analysis of year end actual expenditures the \$504 million budget limit was exceeded, a recoupment based on an adjustment of each nursing facility's state fiscal year 1998 payments will be made by the department in the proportion that \$504 million is to the total expenditures for all nursing facilities for state fiscal year 1998.

Section 10. Litigation, collection and appeals shall be pursued by the cabinet with vigor. The final court order in *West View Nursing Home, Inc. et al v. Commonwealth of Kentucky, Cabinet for Health Services and Cabinet for Human Resources, Franklin Circuit Court, No. 97-CI-00418*, or extraordinary changes related to nursing facility beds in new or existing Certificate of Need regulations or interpretations thereof shall be excluded from the \$504 million budget target.

Section 11. The provisions of this administrative regulation shall be applicable to payments made for the state fiscal year 1998 and shall be applicable to payments made in the subsequent state fiscal year for claims with dates of service between January 1, 1998 and May 31, 1998.

Section 12. Reimbursement Methodology for State Fiscal Year 1998-1999 and State Fiscal Year 1999-2000. The provisions of this section shall be applicable to payments to nursing facilities made for the state fiscal year 1998-1999 and the state fiscal year 1999-2000.

(1) The provisions of this section shall not apply to payments to the following:

- (a) A nursing facility with a certified brain injury unit;
- (b) A nursing facility with a distinct part ventilator unit;
- (c) A nursing facility designated as an institution for mental diseases; and
- (d) A pediatric nursing facility.

(e) A intermediate care facility for the mentally retarded.

(2) Payments to facilities specified in subsection (1) of this section are included in the \$519.1 million biennium budget cap for state fiscal year 1998-1999 and the \$534.6 million biennium budget cap for state fiscal year 1999-2000.

(3) Rates for nursing facilities and nursing facilities designated as mental retardation specialty for the rate year beginning July 1, 1998 and ending June 30, 1999 shall be determined by utilizing a rate on rate method.

(a) The rate of increase over a facility's June 30, 1998 rate shall be five and eight-tenths (5.8) percent for state fiscal year 1998-1999.

(b) The rate of increase over a facility's June 30, 1999 rate shall be at a minimum three (3) percent for state fiscal year 1999-2000 to achieve a rate of increase which shall cause total payments to nursing facilities to be at a minimum of \$534.6 million in that fiscal year based upon static utilization of beds by Medicaid recipients.

(4) The department shall remain at risk for increases in total nursing facility payments which result from higher utilization of beds by Medicaid recipients.

(5) The calculated rate shall be determined by the department as follows:

(a) The department shall use a facility's June 30, 1998, lesser of actual or maximum nursing facility cost per case mix unit which is specified on line 11 of the nursing cost component on the most re-

cent revised rate form MAP-NF1 with an effective date of April 1, 1998.

(b) On the MAP-NF2, the number as specified on line 11 of the MAP-NF1 shall be multiplied by the department's approved facility case mix average for the quarter being calculated.

(c) To this product the department shall add the facility's June 30, 1998 cost saving incentive per diem, as specified on line 15 of MAP-NF1.

(d) The calculation which is determined as specified in paragraphs (a) through (c) of this subsection shall be added to the department's approved "all other cost" per diem payment rate as indicated on line 16 of the "all other cost component" on the MAP-NF1.

(e) The sum arrived at in paragraph (d) of this subsection shall be multiplied on MAP-NF2 by the rate of increase as specified in subsection (3) of this section.

(f) The amount arrived at in paragraph (e) of this subsection plus Schedule J Capital Cost and other department approved add-ons shall yield the calculated nursing facility rate on MAP-NF2.

(6) A case mix adjustment shall be the only adjustment made by the department to the July 1, 1998 through June 30, 2000 rates except for as specified in Section 12(3) of this administrative regulation.

(a) Other adjustments shall not be made to the rates in force from July 1, 1998 to June 30, 1999 except for errors identified by the department when computing the rate.

(b) The case mix adjustment shall be made each quarter to the nursing component of the rates.

(7) The department shall establish an extenuating circumstance pool used to provide an add-on to the calculated rate. An add-on to the calculated rate shall be considered if a facility's increased costs are due to extenuating circumstances that affect one or more facilities as approved by the department.

(8) The extenuating circumstance pool shall:

(a) Not exceed \$3 million

(b) Be prorated among all nursing facilities qualifying for participation in the pool as determined by the department; and

(c) Be adjusted downward if the total Medicaid payments made to nursing facilities are projected to exceed, as a result of inflation, the biennium budget caps as specified in subsection (2) of this section. The biennium budget caps shall include all payments to nursing facilities including the following:

1. Certified brain injury unit;
2. Nursing facilities with a distinct part ventilator unit;
3. Nursing facilities designated as an institution for mental diseases;
4. Federally-defined swing beds; and
5. Pediatric nursing facilities.

(9) Applications for a Medicaid rate add-on shall be submitted to the department by July 31 of each rate year on a form MAP-NF4 provided by the department. Add-ons from the extenuating circumstance pool shall be implemented as of October 1 of each rate year, retroactive to July 1 of the applicable rate year.

(10) \$3,000,000 shall continue to be distributed through the current capital cost Schedule J process as described in Section 4 of this administrative regulation.

(11) The ancillary payment methodology shall remain the same as that used on July 1, 1997 and as specified in Section 4 of this administrative regulation.

Section 13. Newly Participating Facilities. The rate for a facility that began participating in the Medicaid Program after July 1, 1998 shall be 115 percent of the median payment rate of the appropriate urban or rural array determined by the department subsequent to the application of the rate of increase applied effective July 1 of the applicable rate year. The median payment rate established shall not be subject to retroactive cost settlement.

1. Nursing facility arrays. For purposes of setting rate for a nursing facility newly participating after July 1, 1998 the rates for nursing facility's (exclusive of the nursing facility-mentally retarded services, nursing facility-institutions for mental disease, and nursing facility-pediatric facilities) shall be divided into urban and rural arrays.

2. The urban array shall include all facilities within a standard metropolitan statistical area.

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

3. The rural array shall include all facilities in nonstandard metropolitan statistical area counties.

4. The urban and rural arrays shall be further broken down into a "nursing cost center" array and an "other cost center" array.

Section 14. Incorporation by Reference. (1) "Nursing Facility Reimbursement Manual", Department for Medicaid Services, June, 1998, edition which includes MAP-NF1, MAP-NF2, MAP-NF3, and MAP-NF4 is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department for Medicaid Services, 275 East Main Street, 6th Floor West, Frankfort, Kentucky, 40621, Monday through Friday, 8 a.m. to 4:30 p.m.

~~[Section 7. Implementation Date. The provisions of this administrative regulation shall be effective with regard to payments for services provided on or after July 1, 1995.]~~

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: June 25, 1998

FILED WITH LRC: June 30, 1998 at noon

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: Approximately 350 Medicaid nursing facilities. Previous provisions of the regulatory impact analysis for 907 KAR 1:025 filed on February 18, 1998 and published in Volume 24, Number 10 of the Administrative Register of Kentucky dated April 1, 1998 remain in effect.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: \$15.1 million (increased payments to nursing facilities).

2. Second and subsequent years: \$15.5 million (increased payments to nursing facilities).

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None\*

2. Continuing costs or savings: None\*

3. Additional factors increasing or decreasing costs: \*At this time the Cabinet is not aware of additional factors that may increase or decrease costs. However, costs will be monitored on a monthly basis to determine anticipated costs to Kentucky Medicaid Program.

(a) Reporting and paperwork requirements: Determine any necessary adjustments to the extenuating circumstance pool. Existing staff will assume the aforementioned responsibilities.

(4) Assessment of anticipated effect on state and local revenues: None, this administrative regulation is consistent with the budgetary appropriations in HB 321 enacted by the 1998 General Session of the legislature.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Federal and state matching funds.

FY	Federal matching	State matching	Total
1999	\$10,643,990	\$4,456,010	\$15.1 million
2000	\$10,925,950	\$4,574,050	\$15.5 million

(6) To the extent available from the public comments received,

the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky: To be determined after the Notice of Intent public hearing which will be held in accordance with KRS Chapter 13A requirement.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Will ensure the Commonwealth will meet the health and welfare needs of Kentucky's Medicaid eligible individuals who are elderly and disabled.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, and welfare of Medicaid recipients by not having a reimbursement methodology in place to provide compensation for services needed by the elderly and disabled Medicaid eligible recipients of the Commonwealth.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

ADMINISTRATIVE REGULATIONS AS AMENDED BY PROMULGATING AGENCY  
AND REVIEWING SUBCOMMITTEE

ARRS = Administrative Regulation Review Subcommittee  
IJC = Interim Joint Committee

GENERAL GOVERNMENT CABINET  
Kentucky Real Estate Commission  
(As Amended at ARRS, July 14, 1998)

201 KAR 11:011. Definitions for 201 KAR Chapter 11.

RELATES TO: KRS 324.010(1)(a), 324.046, 324.111, 324.117(1),  
324.160(1)(j), (r), 324.410, 324.420

STATUTORY AUTHORITY: KRS 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282  
authorizes the commission to promulgate administrative regulations  
necessary to implement KRS Chapter 324. This administrative regula-  
tion defines terms used in the implementation of KRS Chapter 324.  
~~[Promulgation of the definitions of "false, misleading, and deceptive"~~  
~~are mandated by the legislature in KRS 324.117. The proposed~~  
~~amendment regarding "solicitation" is proposed to protect the con-~~  
~~sumer public from unlicensed practice.]~~

Section 1. Definitions. (1) "Academic credit hour" means:

- (a) One (1) college semester hour; or
- (b) Sixteen (16) fifty (50) minute hours of actual classroom atten-  
dance.
- (2) "Broker" is defined in KRS 324.010(1)(a) and shall not include  
an individual who:

- (a) Is an office or clerical employee of a broker; and
- (b) Is limited to the duties normally assigned to an office or clerical  
employee, which means that the employee shall not:

1. Contact a consumer regarding the consumer's willingness  
to buy, sell, or lease real estate;

2. Solicit or accept a listing or offer;

3. [2:] Show property;

4. [3:] Negotiate a real estate transaction;

5. [4:] Disclose information that is:

- a. Available to the broker; and
- b. Not available to the public; or

6. [5:] Hold himself out to the public as engaged in the business of  
brokering real estate.

~~[(c) "Solicit" means the contacting of consumers regarding a con-~~  
~~sumer's willingness to buy, sell, or lease real estate other than an~~  
~~inquiry by an employee of the principal broker of a company as to~~  
~~whether the consumer is interested in buying, selling, or leasing prop-~~  
~~erty.]~~

(3) "Contract deposit" means money delivered to a licensed agent  
as part of an offer to enter a contract for the sale of real property after:

- (a) The offer or counteroffer is accepted; and
- (b) An executory contract exists.

(4) "False, misleading, or deceptive advertising" means an  
advertisement that is prohibited pursuant to KRS 324.117(1) be-  
cause the advertisement:

(a) Is contrary to fact;

(b) Leads a person to a mistaken belief or conclusion; or

(c) Knowingly made a representation that is contrary to fact.

(5) "Fraud" or "fraudulent dealing" means a material misrepresen-  
tation that:

- (a) Is:
  - 1. Known to be false; or
  - 2. Made recklessly;
- (b) Is made to induce an act;
- (c) Induces an act in reliance on the misrepresentation; and
- (d) Causes injury.

(6) [(5)] "Prize" means an item of value that is:

- (a) Offered to a prospective purchaser on a condition set forth in  
the offer to the prospective purchaser; and
- (b) Not a complimentary:
  - 1. Refreshment, including a soft drink or snack, that is offered to  
the general public; or
  - 2. Gift that:

- a. Has a value less than fifty (50) dollars;
- b. Is given to the purchaser at or after the closing at which the  
purchaser's purchase of the real estate was consummated; and
- c. Was not offered prior to closing.

(7) [(6)] "Regular employee" means an employee who:

- (a) Is compensated at a rate that is fixed in advance in writing;
- (b) Does not receive a commission;
- (c) Works exclusively for the owner; and
- (d) Has his total compensation subject to withholding and FICA  
taxes.

(8) [(7)] "Without unreasonable delay" means within two (2) work-  
ing days of the creation of an executory contract for the sale of real  
property.

[(8) As used in KRS 324.117(1), "false" means contrary to fact;

[(9) As used in KRS 324.117(1), "misleading" means leading one  
to a mistaken belief or conclusion;

[(10) As used in KRS 324.117(1), "deceptive" means knowingly  
making a representation that is contrary to fact.]

ROBERT D. MASSEY, Chairman  
JEFFREY C. BLAIR, General Counsel  
APPROVED BY AGENCY: April 14, 1998  
FILED WITH LRC: April 15, 1998 at 10 a.m.

GENERAL GOVERNMENT CABINET  
Kentucky Real Estate Commission  
(As Amended at ARRS, July 14, 1998)

201 KAR 11:170. Private school approval.

RELATES TO: KRS 324.010(1)([f])(g), 324.046(1), (2)

STATUTORY AUTHORITY: KRS 324.281(5), 324.282

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.282  
authorizes the commission to promulgate administrative regu-  
lations necessary to implement KRS Chapter 324. KRS  
324.010(1)(g) authorizes the commission to approve a real es-  
tate school. KRS 342.046(1) and (2) require an applicant for  
initial licensure as a broker or sales associate to have com-  
pleted the specified number of courses from an approved or  
accredited real estate school. This administrative regulation  
establishes the requirements and application procedures for an  
approved real estate school. [To set policies and procedures for  
private school approval.]

Section 1. (1) To apply for certification as an approved real  
estate school or to renew certification, a real estate school  
shall submit a:

(a) Completed Application for an Approved Real Estate  
School, including the information required concerning cur-  
riculum, instructors, and educational materials and policies;

(b) Copy of the Certificate of Approval from the State Board  
for Proprietary Education or Kentucky Department of Educa-  
tion, if applicable;

(c) Sample schedule to outline how a course will be pre-  
sented;

(d) Completed course outline for each course, which shall  
include:

1. A Real Estate Instructor Application for each instructor,  
as required by 201 KAR 11:175;

2. A copy of a contract or agreement signed by the student  
which outlines the class schedule, grading system, and atten-  
dance requirements; and

3. A copy of the written material, other than the textbook or  
real estate license law manual, which the instructor will use in  
the classroom;

(e) Sample copy of a school brochure or information sheet



VOLUME 25, NUMBER 2 – AUGUST 1, 1998

promoting the school;

(f) Copy of legal documentation required to support an answer, if applicable; and

(g) A sample copy of an official transcript from the school.

(2) An approved school shall notify the commission within ten (10) days of a material change in the information originally furnished on the application or in an attachment to the application.

(3) A renewal application shall be submitted by November 1 of each year. [To obtain a certificate of approval, a real estate school shall apply to the commission on forms provided by the commission and supply all information requested concerning curriculum, instructors, and other educational materials and policies. The forms required in this section are incorporated by reference, and may be reviewed or obtained at the Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday from 8 a.m. to 4:30 p.m.]

Section 2. The curriculum for an approval real estate school shall:

(1) Include a minimum of three (3) academic hours per course;

(2) Be conducted for a maximum of no more than seven (7) hours during a twenty-four (24) hour period; and

(3) Consist of a course containing the topics listed in the Topics Prescribed by the Real Estate Commission. [at least topics and materials prescribed by the Real Estate Commission.]

Section 3. An approved real estate school shall not:

(1) Advertise in conjunction with the business of a broker or a brokerage firm; or

(2) Discuss, induce, or promote affiliation with a [any] broker or brokerage firm.

Section 4. (1) An approved real estate school shall maintain accurate and permanent records on each student enrolled in a course.

(a) A permanent record [all students enrolled in courses. Permanent records] shall include each student's record of courses completed or attempted, academic hours awarded, and final grades.

(b) A Certificate of Completion shall be:

1. Included in the permanent records of each student; and

2. Mailed to each student upon completion of a course.

(2) A temporary record shall:

(a) Be maintained for three (3) years; and

(b) Include student attendance records and test scores. [Temporary records shall be maintained for three (3) years. These records shall include student attendance records and test scores.]

(3) [The sample "official transcript" specified in KRS 324.046(3) shall be submitted with the approved school application.

(4) [An approved real estate school shall notify [provide to] the commission within five (5) days of the beginning of a [any] prelicense course. [current course schedules and instructor resumes at least seven (7) days after the course begins.]

Section 5. An approved real estate school shall permit an inspection [inspections] and monitoring by the commission or its designee to evaluate an [any] aspect of the administration or operation of the school.

Section 6. [An approved school shall notify the commission within ten (10) days of any material change from the information originally furnished on the application form or attachments thereto. An approved school shall renew its certification with the Real Estate Commission annually on forms provided by the commission. The forms required in this section are incorporated by reference, and may be reviewed or obtained at the Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday from 8 a.m. to 4:30 p.m. The annual renewal date shall be November 1. It shall be the school's responsibility to renew on or before the annual renewal date.

Section 7. Private school approval shall [may] be withdrawn if the commission determines that:

(1) Information contained on the application or renewal is inaccurate or misleading; or

(2) The establishment or conduct of the school is not in compli-

ance with this administrative regulation [these administrative regulations] or the instruction is so deficient as to impair the value of the course. If [Where] a school has been given notice of a deficiency under this section, the commission shall give the school an opportunity to correct the deficiency within thirty (30) days.

Section 7. [8.] An effort made directly or indirectly by a school, official or employee, or a person [anyone] on their behalf to reconstruct the real estate licensing examination or portion of the examination [thereof] shall result in immediate revocation of school approval.

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Application for an Approved Real Estate School", 10/97 edition, Kentucky Real Estate Commission;

(b) "Course Outline", 10/97 edition, Kentucky Real Estate Commission;

(c) "Certificate of Completion", 10/97 edition, Kentucky Real Estate Commission; and

(d) "Topics Prescribed by the Real Estate Commission", 1998 edition, Kentucky Real Estate Commission.

(2) This material may be inspected, copied, or obtained at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT D. MASSEY, Chairman

JEFFREY C. BLAIR, General Counsel

APPROVED BY AGENCY: April 14, 1998

FILED WITH LRC: April 15, 1998 at 10 a.m.

GENERAL GOVERNMENT CABINET  
Kentucky Real Estate Commission  
(As Amended at ARRS, July 14, 1998)

201 KAR 11:190. Rules of practice and procedure [for hearings] before the Kentucky Real Estate Commission.

RELATES TO: KRS Chapter 13B, 324.150, 324.151, 324.160, 324.170, 324.200

STATUTORY AUTHORITY: KRS [13A.100(3), (4), (5); 324.281(5)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(5) requires the commission to promulgate administrative regulations necessary to implement KRS Chapter 324. KRS 324.170(1) requires the commission to schedule and conduct an administrative hearing in accordance with the provisions of KRS Chapter 13B prior to denying an application for license or before suspending or revoking a license. This administrative regulation establishes supplemental administrative hearing procedures for matters before the commission. [To set forth practices and procedures for hearings held before the Kentucky Real Estate Commission. These rules and of practice and procedures are designed to inform the complainants and the real estate licensees of the steps to be followed in processing complaints through an administrative hearing before the Kentucky Real Estate Commission. To bring this administrative regulation in compliance with KRS Chapter 13B, concerning the rules of practice applicable to administrative hearings before an administrative agency such as the Kentucky Real Estate Commission; make technical changes to the administrative regulation and to better enable the Kentucky Real Estate Commission to investigate cases through normal case processes.]

Section 1. Complaint Review and Investigation. (1) An aggrieved party shall file a Sworn Statement of Complaint against a licensed real estate sales associate or broker. The complaint shall:

(a) Allege a specific violation of KRS 324.160;

(b) State the basis of the complaint fully and concisely, including the name of the broker or principal broker;

(c) Be notarized by a notary public;

(d) Include a completed damages claimed form, with a copy of each receipt, estimate, or other evidence of damages at-



tached to the report; and

(e) Be filed within two (2) years from:

1. Actual knowledge of the cause of action; or

2. The time circumstances would reasonably have put the aggrieved party on notice of the cause of action.

(2) A respondent shall file a Sworn Answer to Complaint if a complaint is filed against him in accordance with the requirements of KRS 324.151(3). The answer shall:

(a) Identify the respondent;

(b) State his responses to the complaint;

(c) Be notarized by a notary public; and

(d) Include a copy of the following documents:

1. Listing contract;

2. Purchase contract;

3. Seller's disclosure form;

4. Agency disclosure form; and

5. Settlement statement. [An aggrieved party shall file a complaint with the commission within two (2) years from actual knowledge of the cause of action, or from such time as circumstances would reasonably have put the aggrieved party on notice of such cause of action.]

(3) A [(2)-Any] complaint filed with the commission that fails to set forth a legitimate issue under KRS Chapter 324 shall be dismissed by the commission without further investigation or hearing.

(4) Upon completion of an investigation following the submission of a complaint and answer, the commission shall:

(a) 1. Dismiss the case without an administrative hearing if the facts or evidence do not indicate a prima facie case for a violation of KRS Chapter 324; or

2. Schedule an administrative hearing pursuant to KRS Chapter 13B, 324.151, and 324.170; and

(b) Notify the complainant and respondent of its decision in writing. The notification shall include a brief statement explaining the commission's reasons for the decision.

[(3) [(2)] If a complaint filed with the commission sets forth an issue that, if proved, would entail a violation of KRS Chapter 324, that complaint shall be assigned to a commission investigator for investigation in accordance with KRS 324.150:

(4) The commission may investigate a case partially or entirely through discovery methods and the taking of depositions in accordance with 201 KAR 11:190, Section 4:

(5) [(3)] Upon receipt of the complaint and answer and upon completion of the investigation, the commission may dismiss a case without an administrative hearing if no factual controversy is presented that could result in a violation of KRS Chapter 324:

(6) [(4)] Upon receipt of the complaint and answer and upon completion of the investigation, the commission may dismiss a case, upon advice of its general counsel, if insufficient evidence is discovered during the investigation to justify further proceedings:

(7) [(5)] Upon receipt of the complaint and answer and upon completion of the investigation, the commission may set a case for hearing in accordance with KRS Chapter 13B, 324.151 and 324.170:

(8) The commission shall issue appropriate orders concerning its resolution of a pending complaint. Transmittal of such order may be sent by regular mail to the last known address of the party and the party's counsel:

(9) If the commission decides not to conduct an administrative hearing in response to a complaint, the commission shall notify the complainant and respondent of its decision in writing, with a brief statement of the commission's reasons:]

**Section 2. Motions.** (1) A request for the commission or a hearing officer to take or refrain from taking an action shall be made by an oral or written motion.

(2) A motion shall state the basis for the motion, including a citation to or description of the legal authority in support of the requested action, if applicable.

(3) A party shall be given an opportunity to respond to a motion.

**Section 3. Withdrawal of a Complaint.** A complainant may withdraw a complaint if:

(1)(a) An answer has not been filed in accordance with KRS 324.151; and

(b) The withdrawal is made within twenty (20) days of the date the complaint was filed; or

(2)(a) There is good cause for the withdrawal; and

(b) The commission approves the withdrawal.

**Section 4. Consolidation and Severance.** (1) A hearing officer may consolidate cases assigned to his docket upon a finding by the hearing officer that:

(a) There are:

1. Common questions of law or fact; or

2. Identical issues or witnesses; and

(b) Consolidation is appropriate.

(2) A hearing officer may sever consolidated cases or claims in an administrative action upon a finding that the requirements for consolidation established in subsection (1) of this section are not met.

**Section 5. Incorporation by Reference.** (1) The following material is incorporated by reference:

(a) "Sworn Statement of Complaint" 7/98 edition, Kentucky Real Estate Commission; and

(b) "Sworn Answer to Complaint", 7/98 edition, Kentucky Real Estate Commission.

(2) This material may be inspected, copied, or obtained at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m. [Intervention; Joinder of Additional Parties: (1) In all complaints filed before the commission, the commission, or a hearing officer appointed by the commission, shall grant a petition for intervention if:

(a) The petitioner has a statutory right pursuant to KRS 324.151 to initiate the proceeding in which he wishes to intervene; or

(b) The petitioner has an interest which is or may be adversely affected by the outcome of the proceeding;

(2) A petition for intervention shall be filed with the commission and copies mailed to all parties named in the complaint or in the notice of hearing, at least fourteen (14) days before the hearing. The parties shall have seven (7) days in which to file any response they may have to the petition to intervene. The motion for intervention will then stand submitted for decision by the commission or the hearing officer, if one has been appointed:

(3) A petition to intervene may be granted by the commission or hearing officer, if one has been appointed, after consideration of the following factors and a determination that intervention is in the interests of justice:

(a) The nature of the issues;

(b) The adequacy of representation of the petitioner's interest that will be provided by the existing parties to the proceeding;

(c) The ability of the petitioner to present relevant evidence and argument; and

(d) The effect of intervention on the commission's ability to implement its statutory mandate.

(4) If a petitioner qualifies for intervention under subsection (3) of this section, the commission or hearing officer may impose conditions upon the intervenor's participation in the proceedings, either at the time that the intervention was granted or any subsequent time. Conditions may include:

(a) Limiting the intervenor's participation to designated issues in which the intervenor has a particular interest demonstrated by the petition;

(b) Limiting the intervenor's use of discovery, cross-examination, and other procedures to promote the orderly and prompt conduct of the proceedings;

(c) Requiring two (2) or more intervenors to combine their presentations of evidence and argument, cross-examination, discovery, and other participation in the proceedings; or

(d) Any other condition which in the interests of justice will provide for the expedient resolution of a complaint, conduct of proceedings or a hearing;

(5) The commission or the hearing officer, if one has been appointed, shall, at least three (3) working days prior to a hearing, issue an order granting or denying each then pending petition for intervention, specifying any conditions for participation under subsection (4) of this section and briefly state the reasons for the order. The commis-

sion or the hearing officer shall promptly provide notice of an order granting, denying or modifying an intervention to the petitioner for intervention, and to all parties;

Section 3. Motions and Requests for Withdrawal of Complaints or Dismissal. (1) All motions of any nature must be in writing and filed with the Kentucky Real Estate Commission, and shall be served on every other party to the action and the hearing officer assigned to the case;

(2) The party filing a motion shall tender a proposed order granting the relief requested;

(3) The movant may file a brief memorandum supporting the motion, and opposing parties may file brief memoranda in reply. Further memoranda (e.g., reply to response) shall not be filed;

(4) Every motion and response, the grounds of which depend upon the existence of facts not appearing in evidence, shall be supported by affidavits demonstrating such facts;

(5) Every motion, the grounds of which depend upon the existence of facts which movant contends are shown in the evidence or are admitted by the pleadings, shall make reference to the point in the record where that evidence or admission is found;

(6) Motions to dismiss or other motions affecting a substantive issue must be considered by a quorum of the commission members. Procedural issues, including motions for continuances or discovery motions may be ruled upon by the chairperson [chairman] of the commission or the hearing officer appointed by the commission;

(7) [(2)] Motions for a continuance of a hearing shall only be granted for good cause. A scheduling conflict of a party, a witness or an attorney for a party shall not be good cause for a continuance unless the request for the continuance is received within ten (10) working days of receipt of the notice of hearing;

(8) [(3)] A complainant has the right to withdraw a complaint within twenty (20) days of the date [of] the complaint is filed, or prior to the commission's receipt of an answer filed in accordance with KRS 324.151, whichever is earlier. Complaints may be withdrawn subsequent to this deadline only upon a showing of good cause and with the approval of the commission;

Section 4. [3.] Discovery. (1) Discovery and the taking of depositions shall be in accordance with the provisions of Civil Rules 26 to 37, inclusive, except for Civil Rule 27, which shall not apply to practice before the commission or a hearing officer;

(2) In all cases [for a hearing before the commission,] discovery through written or oral depositions, interrogatories, or requests for admission shall be permitted; provided that:

(a) The time, place and method of discovery imposes no undue burden upon the witness and other parties;

(b) Any oral deposition must be taken where the witness resides or does business;

(c) All the discovery will be completed fifteen (15) days prior to the hearing date, unless otherwise ordered by the commission or hearing officer, if one (1) has been appointed [and transcribed prior to the hearing date]; and

(d) Copies of all discovery documents and depositions shall be filed [are] filed with the commission at the cost of the party requesting discovery on or before the date set for a hearing;

(3) The commission or the hearing officer, if one has been appointed, may issue subpoenas and discovery orders when requested by a party or on its own volition. When a subpoena is disobeyed, any party may apply to the Circuit Court of the Judicial Circuit in which the administrative hearing is to be held for an order requiring obedience. Failure to comply with an order of the Circuit Court shall be cause for punishment as a contempt of the court;

(4) Depositions may be taken by telephone provided the reporter administering the oath to the witness and reporting the deposition is physically present with the witness at the time the deposition is given. Notice of telephonic deposition must include the following information:

(a) That the deposition is to be taken by telephone;

(b) The address and telephone number from which the call will be placed to the witness;

(c) The address and telephone number of the place where the witness will answer the deposition call; and

(d) That all opposing parties may participate in the deposition either at the place where the deposition is being given, at the place the

telephone call is placed to the witness, or by conference call. If a party elects to participate by conference call, that party must contribute proportionate costs of the conference call;

(5) [(2)] The chairperson [chairman] of the commission or the hearing officer appointed in that case shall have the right to deny, limit, restrict or mandate discovery;

(6) [(3)] Any notice of deposition must be served on the general counsel of the commission and the general counsel shall have the right to attend and participate in all depositions or other discovery proceedings pertaining to a case before the commission;

(7) [(4)] The commission's general counsel may, in his discretion, allow the parties to a case before the commission to review the investigative file of that case. If disclosure of said file prior to the hearing may impede or obstruct the prosecution of that case, the investigative file shall not be disclosed until the termination of the administrative proceedings;

Section 5. [4.] Prehearing Conferences and Settlement Agreements. (1) Any party or the general counsel for the commission may request and the chairperson [chairman] of the commission or appointed hearing officer may order that a prehearing conference take place in a given case. The commission may also order the convening of a prehearing conference on its own volition;

(2) A prehearing conference shall be convened and conducted by the commission or a hearing officer upon reasonable notice to all parties to deal with the exploration of jurisdictional and procedural matters, settlement possibilities or facilitation of settlement, preparation of stipulations, clarification of issues, rulings on motions and witnesses, taking of evidence, issuance of subpoenas and orders, and all other matters that will promote the orderly and prompt conduct of the hearing;

(3) Any [A] prehearing conference shall be attended by all parties, attorneys of record and the general counsel of the commission;

(4) The commission or hearing officer may conduct all or part of a prehearing conference by telephone, television, or other electronic means, if each party to the prehearing conference has an opportunity to hear, and, if technically feasible, to see the entire proceeding as it occurs, and if each party agrees;

(5) Upon conclusion of a prehearing conference, the hearing officer shall issue a prehearing order incorporating matters determined at the prehearing conference. If a prehearing conference is not held, the hearing officer may issue a prehearing order, based upon the pleadings, to regulate the conduct of the administrative hearing;

(6) A [;] a hearing officer appointed by the commission may attend said conference;

(2) The purpose of a prehearing conference shall be to explore the possibility of settlement, prepare stipulations, clarify issues, address procedural motions and such other matters as will promote the orderly and prompt conduct of the hearing;

(3) settlement agreement may be negotiated between the general counsel for the commission, the complainant and the respondent. All settlement agreements must be in writing and clearly provide that the parties understand that they are waiving their right to an administrative hearing and that the settlement agreement, if accepted and adopted by the commission, will become a final order;

(7) The commission shall review all proposed settlement agreements. [(4) Upon reviewing a proposed settlement agreement,] The commission may accept or reject said proposed settlement [proposal] in its entirety; no alterations to [such] an agreement may become a final order without the agreement and consent of all parties to the case. If a proposed settlement agreement is rejected by the commission, the commission shall return the proposed agreement to the parties to the agreement. If a settlement agreement is accepted, the commission shall issue an order approving settlement;

Section 6. [5.] Hearings. (1) The chairperson [chairman] of the commission or the duly appointed hearing officer shall preside over all administrative hearings and shall have the authority to rule on all motions, to control the conduct [procedure] of the hearing and to admit or exclude testimony or other evidence;

(2) All hearings conducted pursuant to the provisions of KRS Chapter 324 and this administrative regulation, shall be in accordance with KRS Chapter 13B;

(3) Notice of an administrative hearing shall be provided pursuant

to the provisions of KRS 13B.050.

(4) Evidence on behalf of the complainant shall be presented by the general counsel for the commission, unless the complainant chooses to employ a private attorney to present said evidence. In all cases, the general counsel shall have the right to question witnesses and offer evidence into the record.

(5) [(3)] Evidence may be admitted if it is of the type commonly relied upon by reasonably prudent men and women in the conduct of their affairs. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. Hearsay evidence, including affidavits, may be admitted for the purpose of supplementing competent evidence in the discretion of the chairperson [chairman] of the commission or the hearing officer appointed to conduct the hearing.

(6) [(4)] Two (2) or more proceedings under the act may be consolidated [joined] by the commission in its discretion.

(7) [(5)] All hearings before the commission or hearing officer shall proceed in the following order, wherever practical:

(a) Opening statements in the following order:

1. General counsel;
2. Complainants;
3. Respondents;

(b) Witnesses and evidence on behalf of the complainant;

(c) Additional witnesses and evidence presented by general counsel;

(d) Witnesses and evidence on behalf of respondent;

(e) Closing statements in the following order:

1. Respondents;
2. Complainants;
3. General counsel.

(8) [(6)] Testimony to be considered by the commission or hearing officer may be provided [taken] by deposition, in accordance with 201 KAR 11:190, Section 4. [KRS 324.190(3).] A party or witness will be permitted [allowed] to testify by deposition, rather than attend the hearing, upon a showing of inability to attend or hardship, and that the other parties to the proceedings shall [will] have an opportunity to cross-examine the party or witness at said deposition.

Section 7. [6.] Posthearing Proceedings. (1) The hearing officer shall complete and submit to the commission, no later than sixty (60) days after receiving a copy of the official record of the proceeding, a written recommended order which shall include the hearing officer's findings of fact, conclusions of law and recommended disposition of the hearing, including recommended penalties, if any. The recommended order shall also include a statement fully advising the parties of their rights to file exceptions and their appeal rights.

(2) If an extension of time is needed by the hearing officer to complete and submit his recommended order to the commission, the hearing officer may be granted an extension, not to exceed thirty (30) days, by the chairperson of the commission, and based upon substantial proof that the extension of time is needed. The statement and order granting an extension shall be included in the record of the hearing, and notice of the extension shall be sent to all parties.

(3) A copy of the hearing officer's recommended findings of fact, conclusions of law and order, and recommended disposition of the hearing shall be sent to each party and their counsel, if represented, and each party shall have fifteen (15) days from the date the recommended order was mailed within which to file exceptions to the recommended findings of fact, conclusions of law and order and recommended disposition of the hearing with the commission. Transmittal of a recommended order may be sent by regular mail to the last known address of the party and the party's counsel. Exceptions must be received by the commission within the time denominated in this subsection, consistent with Civil Rule 6.01. The case shall thereafter stand submitted to the commission for its decision.

(4) The provisions of this section shall not apply to an administrative hearing where the hearing officer conducts the hearing in the presence of the commission, and the commission renders a decision without the recommendation of the hearing officer.

Section 8. Commission Action Upon Submission of a Case. (1) The commission shall deliberate on all cases in closed session. The specific findings of the commission shall be made in open session following the commission's deliberations.

(2) The commission shall consider the entirety of the record, in-

cluding the recommended findings of fact, conclusions of law and order and recommended disposition, and any exceptions duly filed to the recommended findings of fact, conclusions of law and order.

(3) The commission may accept the recommended order of the hearing officer and adopt it as the commission's final order, or it may reject or modify, in whole or in part, the recommended order, or it may remand the matter, in whole or in part, to the hearing officer for further proceedings.

(4) If a matter is remanded to the hearing officer for further proceedings, such remand shall be in writing, and shall state the reason for the remand, and include the proceedings or issues to be addressed by the hearing officer on remand. Following a remand, the matter will be returned to the commission for issuance of its final order.

(5) The final order of the commission shall be in writing, and stated in the record. If the final order differs from the recommended order of the hearing officer, the commission's order shall include separate statements of findings of fact and conclusions of law. The final order shall include the effective date of the order, fully advising the parties of their available appeal rights.

(6) The commission shall render a final order or order of remand in an administrative hearing within ninety (90) days after receipt of the official record of the hearing and submission of the hearing officer's recommended findings of fact, conclusions of law and order to the commission, unless the matter is remanded to the hearing officer for further proceedings, in which case the commission shall issue its final order within ninety (90) days after resubmission of the case for its decision.

(7) Unless waived by a party, a copy of the final order shall be transmitted to each party and to his attorney of record by certified mail, return receipt requested, sent to the last known address of the parties or their counsel, or by personal service. Service by mail shall be complete upon the date on which the commission receives the returned receipt or the returned notice.

(8) This section shall not apply to disposition of cases or settlements pursuant to KRS 13B.070(3) and Section 5 of this administrative regulation.

(9) The commission shall not reconsider any final order.

Section 9. Appeals. (1) Any party aggrieved by the action of the commission issuing a final order to a hearing, may appeal that decision pursuant to the provisions of KRS 13B.140.

(2) As a prerequisite to appeal, the aggrieved party shall first post a bond to secure the cost of the action and any award of damages, including restitution, or an award from the recovery fund, in an amount as may be approved by the clerk of the Circuit Court, with good and solvent surety.]

ROBERT D. MASSEY, Chairman  
JEFFREY C. BLAIR, General Counsel  
APPROVED BY AGENCY: April 14, 1998  
FILED WITH LRC: May 14, 1998 at 11 a.m.

GENERAL GOVERNMENT CABINET  
Kentucky Real Estate Commission  
(As Amended at ARRS, July 14, 1998)

201 KAR 11:230. Mandatory continuing education.

RELATES TO: KRS 324.281(7) [324.410(3)]  
STATUTORY AUTHORITY: KRS 324.281(5), (7), 324.282  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 324.281(7) requires an actively-licensed agent, except an agent licensed prior to June 19, 1976, to successfully complete six (6) hours of mandatory continuing education each year as a condition of license renewal and requires that two (2) of the six (6) hours pertain to the study of real estate law. This administrative regulation establishes the requirements relating to continuing education. [To inform and set certain standards for the licensees and to protect the public.]

Section 1. (1)(a) Except as provided in paragraph (b) of this subsection, an active licensee shall meet the requirements of KRS 324.281(7) by attending a continuing education course

sponsored or approved by the commission that meets the requirements established in this section of this administrative regulation.

(b) An active licensee shall attend a commission-approved core course once every four (4) years. The core course shall:

1. Satisfy the licensee's mandatory continuing education requirement for the year in which the course is taken;

2. Be a six (6) hour comprehensive review of the requirements of KRS Chapter 324, 201 KAR Chapter 11, common and federal law relating to real estate, and the standards of practice for a real estate licensee; and

3. Be taken according to the following schedule:

a. If the licensee's birth month is January, February, or March, the licensee shall take the core course in the first year of a four (4) year cycle.

b. If the licensee's birth month is April, May, or June, the licensee shall take the core course in the second year of a four (4) year cycle.

c. If the licensee's birth month is July, August, or September, the licensee shall take the core course in the third year of a four (4) year cycle.

d. If the licensee's birth month is October, November, or December, the licensee shall take the core course in the fourth year of a four (4) year cycle. [Beginning with the calendar year January 1, 1992, actively licensed agents shall be required to attend annually six (6) hours of continuing education courses sponsored or approved by the commission. Of this six (6) hours, two (2) hours shall be in courses on real estate law. Each active licensee shall be required to attend one (1) commission approved core course once every four (4) years in accordance with a commission established schedule which shall satisfy the licensee's mandatory continuing education requirement for the year in which the core course is taken.]

(2) To apply for approval of a continuing education course, a sponsor shall submit a:

(a) Completed Continuing Education Course Application, which shall:

1. Include information concerning curriculum, instructors, and educational materials and policies; and

2. Be signed by the sponsor's administrator to indicate compliance with applicable law and the requirements of this administrative regulation;

(b) Copy of the Certificate of Approval from the State Board for Proprietary Education, if the sponsor is:

1. Not an accredited college or university; and

2. Is certified by the State Board for Proprietary Education;

(c) Completed Real Estate Instructor Application for each instructor, as required by 201 KAR 11:175; and

(d) Copy of all advertising or brochures advertising the continuing education course. [In order for an education course to be approved by the commission, the sponsor of the course shall provide to the commission annually and for renewal of approval, on or before November 1 of the year before the course will be offered:

(a) An outline of the course in such detail that all the pertinent material to be taught is disclosed; and

(b) The work experience, credentials and educational background of the instructors of the course.]

(3) To receive approval, an education course shall consist of topics that shall [will]:

(a) Enable a student to better understand the brokerage business; and

(b) serve the public.

(4) A course that is [Courses that are] self-motivational in nature shall not be approved.

(5) A course instructor shall:

(a) Be reasonably competent by educational background or work experience;

(b) [and] Have adequate knowledge of the course material; and

(c) [-He shall] Be an "approved instructor" under the prelicensure education requirements established in 201 KAR 11:175.

(6) An education course shall be sponsored by:

(a) An accredited real estate school;

(b) [-or by] A school that has been given a certificate of approval by the Kentucky Board of Proprietary Education;

(c) An [-other] appropriate governmental regulatory body; or

(d) [-or by] An approved real estate school[-or a commission-approved nonprofit real estate related organization].

(7) A sponsor shall:

(a) At least thirty (30) days prior to the scheduling of a continuing education course, submit to the commission a completed Continuing Education Schedule that identifies the course provider, course title and number, instructor, date, time, and location;

(b) Give to each attendee listed on the roster a completed Continuing Education Completion Certificate;

(c) Within ten (10) days of a continuing education course, submit to the commission:

1. A completed Continuing Education Attendance Roster, which shall include the name, address, and Social Security number of each attendee, in alphabetical order;

2. Each completed Continuing Education Course Evaluation completed by each attendee listed on the roster; and

3. A completed CE Course Evaluation Transmittal Form;

(d) Permit monitoring and inspection by the commission; and

(e) Make the course available to all licensed agents, subject to space limitations. [A sponsor shall:

(a) Provide:

1. Attendance records to the commission;

2. Course evaluation forms to students for submission to the commission;

(b) Permit monitoring and inspection by the commission;

(c) Sign a written agreement relating to compliance with commission requirements, on a form prescribed by the commission; and

(d) Make the course available to all licensed agents, subject to space limitations.];

(8) [The forms required in subsection (5) of this section are incorporated by reference, and may be reviewed or obtained at the Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday from 8 a.m. to 4:30 p.m.

(9) An education course shall consist of a minimum of two (2) hours. One (1) hour of continuing education shall be allowed for each fifty (50) minutes of actual attendance.

(9) [(+0)] An escrowed licensee shall not be required to attend a continuing education course [courses]. Before a license is changed from escrow to active, a licensee shall provide the commission with documentation of the completion of the current calendar year's continuing education requirements. Beginning January 1, 1999, if the licensee has not completed a commission-approved core course in the previous four (4) years as required by subsection (1)(b) of this section, [then] the core course shall become the current calendar year's continuing education requirement for a license changing from escrow to active.

(10) [(+1)] A sales associate licensee shall not be required to attend a continuing education course [courses] during the first calendar year in which he is first licensed in Kentucky.

(11) [(+2)] Beginning April 1, 1993, An active license shall not be renewed unless the licensee has complied with the provisions of this administrative regulation.

(12) [(+3)] (a) A licensee shall complete the mandatory continuing education requirements of this administrative regulation by December 31 of each calendar year.

(b) Proof of completion of the mandatory continuing education requirements shall be submitted to the commission on or before January 15 of the following calendar year.

(c) If a licensee fails to comply with the provisions of paragraphs (a) and (b) of this subsection, the executive director shall notify him as soon as practicable on or after January 15 [31] of the following calendar year.

(d) A license shall not be expired [cancelled] if a licensee:

1. Places his license in escrow; or

2. Completes the requirements of a delinquency plan that complies with subsection (13) [(+4)] of this section [administrative regulation].

(e) A [Any] licensee who fails to either place his [their] license in escrow or file the delinquency plan on or before February 15 as required by subsection (13) of this section shall have his license expired [cancelled] as of that date.

(13) [(+4)](a) On or before February 15 of the following calendar

VOLUME 25, NUMBER 2 – AUGUST 1, 1998

year, a licensee shall submit a written delinquency plan to complete the continuing education requirements for the previous calendar year.

(a) [(b)] [The delinquency plan shall include a list of approved or sponsored education courses that the licensee agrees to attend.

(e)] The delinquency plan shall provide that the continuing education requirements for the previous calendar year shall be completed on or before June 15.

(b) [(c)] [(d)] The licensee shall submit a fee of \$200 with his delinquency plan, as required by KRS 324.090(2).

(c)1. [(d)] [(e)] If a licensee fails to complete an approved delinquency plan, his license shall be suspended for two (2) years.

**2. To reinstate an expired license at the conclusion of the two (2) year period, the licensee shall [must], within ninety (90) days of the expiration of the suspension:**

a. Complete the current year's continuing education requirements;

b. Submit required documentation to reinstate the license; and

c. Pay all necessary renewal and transfer fees as required by KRS 324.287.

**3. If the licensee does not comply with the requirements of subparagraph 2 of this paragraph, after ninety (90) days:**

a. The license shall be expired; and

b. The licensee shall meet the requirements for initial licensure, including retaking the examination. [After the ninety (90) day period, the license will be cancelled. The licensee will be required to meet the current prelicense requirements and retake the examination.]

(14) [(e)] [(f)] A licensee who places his license in escrow under the provisions of subsection (12) [(13)](d) of this section shall not [be permitted to] reactivate his license unless he has:

(a) [1-] Completed the current year's mandatory continuing education requirements; and

(b) [2-] Paid the fee required by KRS 324.287. [provided for by paragraph (d) of this subsection.]

(15) The time requirements established [provided] in this administrative regulation may be extended by the commission if:

(a) A true hardship or other good cause clearly warrants relief; and

(b) The request for extension is requested in writing on or before January 30 [15] of the following calendar year.

(16)(a) A licensee who teaches an approved continuing education course shall be entitled to:

**1. One (1) hour of credit for each hour of instruction he teaches; and**

**2. Two (2) hours credit for preparation for each course he teaches.**

(b) The instructor's supervisor shall submit a written request for credit to be awarded for teaching a class. The request shall contain the instructor's name, date and name of course, and the number of hours.

(c) The instructor shall not receive credit more than once in a calendar year for teaching a specific course. [A licensee who teaches an approved continuing [mandatory] education course shall be entitled to one (1) hour of credit for each hour of instruction he teaches plus two (2) hours credit for preparation for each course he teaches. The instructor's supervisor must submit a written request for credit to be awarded for teaching a class. The request must contain the instructor's name, date and name of course, and the number of hours. The instructor may only receive credit once in each calendar year for teaching any given course.]

(17) Hours of instruction in prelicense real estate education courses shall be credited to the mandatory continuing education requirements.

(a) The licensee shall [it shall be the licensee's responsibility to] submit a transcript or course completion certificate for the prelicense course in order to receive credit toward the [their] continuing education requirements for that calendar year.

(b) An instructor of an approved prelicense real estate course shall [may] receive credit toward his continuing education requirements. Instructor credit for a prelicense course shall comply with the requirements for a continuing education course, as established in subsection (17) of this section. [Reporting shall follow the provisions as outlined in Section 16 of this administrative regulation.]

(18) Hours of mandatory continuing education exceeding the amount required shall not be carried forward to the next year's requirements.

(19) [Education courses offered by the commission shall be avail-

able at no charge to a licensee.

(20)] The provisions of this administrative regulation shall not apply to any person licensed by the commission prior to June 19, 1976.

**Section 2. Incorporation by Reference. (1) The following material is incorporated by reference:**

(a) "Continuing Education Course Application", 11/97 edition, Kentucky Real Estate Commission;

(b) "Continuing Education Schedule", 11/97 edition, Kentucky Real Estate Commission;

(c) "Continuing Education Attendance Roster", 11/97 edition, Kentucky Real Estate Commission;

(d) "CE Course Evaluation Transmittal Form", 11/97 edition, Kentucky Real Estate Commission;

(e) "Continuing Education Course Evaluation", 11/97 edition, Kentucky Real Estate Commission; and

(f) "Continuing Education Completion Certificate", 11/97 edition, Kentucky Real Estate Commission.

(2) This material may be inspected, copied, or obtained at the Kentucky Real Estate Commission, 10200 Linn Station Road, Suite 201, Louisville, Kentucky 40223, Monday through Friday, 8 a.m. to 4:30 p.m.

ROBERT D. MASSEY, Chairman

JEFFREY C. BLAIR, General Counsel

APPROVED BY AGENCY: April 14, 1998

FILED WITH LRC: April 15, 1998 at 10 a.m.

**KENTUCKY LOTTERY CORPORATION**

(As Amended at ARRS, July 14, 1998)

**202 KAR 3:010. Code of ethics.**

RELATES TO: KRS 154A.060(2)(e) [(a)]

STATUTORY AUTHORITY: KRS 154A.050(1)(d), 154A.060(2)(e)

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 154A.060(2)(e), the Kentucky Lottery Corporation is required to adopt by administrative regulation a code of ethics for officers and employees of the corporation. This administrative regulation adopts by administrative regulation the Code of Ethics of the Kentucky Lottery Corporation.

Section 1. Code of Ethics. An officer or employee of the Kentucky Lottery Corporation shall comply with the requirements established in the Kentucky Lottery Corporation Code of Ethics. [On May 22, 1997, and January 30, 1998, the Board of Directors of the Kentucky Lottery Corporation promulgated the Code of Ethics of the Kentucky Lottery Corporation.]

Section 2. **Incorporation by Reference.** (1) The "Kentucky Lottery Corporation Code of Ethics, July 14, 1998, edition, [as promulgated on May 22, 1997, and January 30, 1998]" is incorporated [herein] by reference.

(2) This material [The "Kentucky Lottery Corporation Code of Ethics, as promulgated on May 22, 1997, and January 30, 1998"] may be inspected, copied, or obtained from Camille Bathurst, General Counsel, at the corporate offices of Kentucky Lottery Corporation, 1011 West Main Street, Louisville, Kentucky 40202-2623, Monday through Friday, from 8 a.m. to 5 p.m.

ARTHUR L. GLEASON, Jr., President and CEO

CAMILLE BATHURST, General Counsel

APPROVED BY AGENCY: April 30, 1998

FILED WITH LRC: May 1, 1998 at 10 a.m.



## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

### TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (As Amended at ARRS, July 14, 1998)

#### 301 KAR 2:172. Deer hunting seasons and requirements.

RELATES TO: KRS 150.010, 150.170, 150.175, 150.180, 150.340, 150.360, 150.370, 150.390, 150.395, 150.990

STATUTORY AUTHORITY: 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025 grants the department authority to set hunting seasons, bag limits, methods of taking and other matters necessary to carry out the purpose of KRS Chapter 150. This administrative regulation establishes deer hunting seasons, prescribes legal methods of taking and sets forth tagging and checking requirements for deer hunting.

Section 1. Definitions. (1) "Adult" means an individual at least eighteen (18) years of age.

(2) "Antlered deer" means a deer with one (1) antler at least four (4) inches long, measured from the skin to the tip of the antler.

(3) "Antlerless deer" means a deer;

(a) Without antlers; or

(b) With both antlers less than four (4) inches long, measured from the skin to the tips of the antlers.

(4) "Any deer" means antlered or antlerless deer.

(5) "Archery equipment" means a long bow, recurve bow or compound bow [long bows, recurve bows or compound bows] incapable of holding an arrow at full or partial draw without aid from the archer.

(6) "Arrow" means the projectile fired from a bow or crossbow.

(7) "Barbed broadhead" means a point or portion of a blade projecting backward from a broadhead designed to hold an arrow within an animal.

(8) "Bonus antlerless archery permit" means a permit which, in conjunction with a statewide deer permit, allows the holder to take one (1) additional antlerless deer by archery.

(9) "Bonus antlerless zone one permit" means a permit which, in conjunction with a statewide deer permit, allows the holder to take one (1) additional antlerless deer in a zone one county.

(10) "Crossbow" means a bow designed or fitted with a device to hold an arrow at full or partial draw without aid from the archer.

(11) "Deer" means a white-tailed (*Odocoileus virginianus*).

(12) "Firearm" means a breech or muzzle-loading rifle, shotgun or handgun.

(13) "Fully automatic firearm" means a firearm which fires more than one (1) time with a single pull of the trigger.

(14) "License year" means the period from March 1 through the following last day of February.

(15) "Modern gun" means a rifle, handgun or shotgun which is loaded from the rear of the barrel.

(16) "Muzzle-loading gun" means a rifle, shotgun or handgun which is loaded from the discharging end of the barrel or discharging end of the cylinder.

(17) "Shotshell" means ammunition containing more than one (1) projectile.

(18) "Zone" means the grouping of counties or portions of counties as stipulated in 301 KAR 2:174, Deer hunting zones.

Section 2. Archery and Crossbow Season Dates. A deer hunter may use:

(1) Archery equipment from the third Saturday in September through January 15.

(2) A crossbow:

(a) For ten (10) days beginning the fourth Tuesday in November;

(b) During modern gun deer season; and

(c) During muzzle-loader seasons.

Section 3. Archery and Crossbow Zone Limits. (1) During the modern gun deer season or muzzle-loader seasons, a deer hunter using archery equipment or a crossbow shall observe the same limits as a hunter using a firearm.

(2) During the youth hunt as specified in Section 8 of this administrative regulation, a deer hunter using archery equipment may take any deer in Zones 1 through 6.

(3) During portions of archery or crossbow seasons not concurrent

with the modern gun deer season or the muzzle-loader seasons a deer hunter:

(a) May take any deer in Zones 1 through 6.

(b) Shall not take antlerless deer in Zone 7.

Section 4. Muzzle-loading Gun Season Dates. A deer hunter may use a muzzle-loading gun:

(1) ~~[In 1997, for two (2) days beginning the third Saturday in October.~~

(2) ~~[In 1998 and subsequent years,] For two (2) days beginning the fourth Saturday in October.~~

(2) ~~[(3)]~~ For seven (7) days beginning the second Saturday in December.

(3) ~~[(4)]~~ During the modern gun deer season.

Section 5. Muzzle-loading Gun Season Zone Limits. During a season when a muzzle-loading gun is the only firearm ~~[seasons when muzzle loaders are the only firearms]~~ allowed, a deer hunter using a muzzle-loading gun, archery equipment or a crossbow:

(1) May take any deer in Zones 1 through 5.

(2) Shall not take antlerless deer in Zones 6 or 7.

Section 6. Modern Gun Deer Season Dates. Beginning the second Saturday in November, a person may take deer with a firearm, archery equipment or a crossbow:

(1) For ten (10) consecutive days in Zones 1 through 6.

(2) For five (5) consecutive days in Zone 7.

Section 7. Zone Limits for the Modern Gun Deer Season. A deer hunter using firearms, archery equipment or crossbows during the modern gun deer season shall observe the following limits:

(1) Zone 1: any deer for the entire ten (10) day season.

(2) Zone 2: any deer the first five (5) days; antlered deer the last five (5) days.

(3) Zone 3: any deer the first two (2) days; antlered deer the last eight (8) days.

(4) Zone 4: antlered deer the first eight (8) days; any deer the last two (2) days.

(5) Zones 5 and 6: antlered deer for the entire ten (10) day season.

(6) Zone 7: antlered deer for the entire five (5) day season.

Section 8. Youth Hunt. (1) ~~[In 1997,] For two (2) consecutive days beginning on the third [fourth] Saturday in October, a person under the age of sixteen (16) may use a firearm to take:~~

(a) Any deer in Zones 1 through 5.

(b) Antlered deer in Zones 6 and 7.

(2) ~~[In 1998 and subsequent years, the youth hunt shall be for two (2) consecutive days beginning on the third Saturday in October.~~

(3) An adult accompanying a juvenile during the youth hunt shall:

(a) Not carry a firearm ~~[firearms]~~; and

(b) Comply with the hunter orange provisions of Section 12 of this administrative regulation.

Section 9. Use of Tags. A deer hunter:

(1) Shall not tag an antlered deer with an "antlerless deer" tag.

(2) May tag ~~[either]~~ antlered or antlerless deer with the "any deer" tag.

(3) Using a bonus antlerless archery permit or a bonus antlerless zone one permit shall:

(a) Not take an antlered deer;

(b) Have the receipt portion of a valid statewide deer permit in his possession; and

(c) Tag and check deer as required by Sections 15 and 16 of this administrative regulation.

Section 10. Illegal Hunting Equipment. (1) A person shall not use or possess while deer hunting:

(a) A device capable of taking a deer except a firearm, crossbow or archery equipment. ~~[firearms, archery equipment or crossbows:]~~

(b) Rimfire ammunition.

(c) A fully-automatic firearm. ~~[Fully-automatic firearms:]~~

(d) A firearm ~~[Firearms]~~ with a magazine capacity greater than ten (10) rounds.

- (e) Steel jacketed ammunition.
- (f) Tracer bullet ammunition.
- (g) A shotgun shell containing more than one (1) projectile. [Shot-shells:]
- (h) A broadhead smaller than seven-eighths (7/8) inch wide.
- (i) A barbed broadhead.
- (j) A crossbow without a working safety device.
- (k) A chemically treated arrow.
- (l) An arrow with a chemical attachment.
- (2) Except when a firearm is [firearms-are] permitted for deer hunting, a person hunting deer with archery equipment or a crossbow shall not carry a firearm. [firearms:]

Section 11. Season Limits. Except as provided in 301 KAR 2:178, 2:111 or 2:176, a person shall not take in one (1) license year more than:

- (1) One (1) antlered deer.
- (2) Four (4) deer, provided that the person has purchased the appropriate bonus permits as provided in this administrative regulation. [Two (2) deer:]

Section 12. Hunter Orange. (1) During the modern gun deer season, muzzle-loader seasons or the youth hunt, a person hunting any species, and a person accompanying a hunter, shall display solid, unbroken hunter orange visible from all sides on the head, back and chest:

- (2) Subsection (1) of this section shall not apply to a person:
  - (a) Hunting migratory birds; or
  - (b) Hunting at night.
- (3) The hunter orange portions of a garment worn to fulfill the requirements of this section:
  - (a) May display a small section of another color.
  - (b) Shall not have mesh weave openings exceeding one-fourth (1/4) inch by any measurement.
- (4) A camouflage pattern hunter orange garment worn without additional solid hunter orange on the head, back and chest shall not meet the requirements of this section.

Section 13. Hunter Requirements, Shooting Hours, and Taking of Other Species. (1) An adult shall:

- (a) Accompany a person under sixteen (16) years old; and
- (b) Remain in a position to take immediate control of the juvenile's firearm.
- (2) An adult accompanying a juvenile hunter shall not be required to possess a hunting license or deer permit if the adult is not hunting.
- (3) A deer hunter:
  - (a) May be in the woods or stands before or after daylight hours, but shall not take deer except during daylight hours.
  - (b) [May take wild hogs:]
  - (c) Shall check wild hogs at an official wildlife check station.
  - (d) Shall not use dogs.
  - (e) [e] Shall not take swimming deer.
- (4) A hunter in a vehicle or boat, or on horseback, shall not take deer.

Section 14. License and Deer Permit Requirements. (1) Unless exempted by KRS 150.170(3), a person shall have a deer permit in his possession while hunting:

- (a) Deer; or
- (b) Wild hogs or coyotes during a season or wildlife management area hunt where a firearm is allowed for deer hunting. [Wild hogs; or
- (c) Coyotes] [During seasons or wildlife management area hunts where firearms are allowed for deer hunting:
  - 1. Wild hogs; or
  - 2. Coyotes.]
- (2) During a license year, a person [A person possessing an adult hunting license] shall use no more than:
  - (a) One (1) statewide [two (2) tag] deer permit; [per license year.]
  - (b) One (1) bonus antlerless archery permit; and
  - (c) One (1) bonus antlerless zone one permit.
- (3) In lieu of a statewide deer permit, a person possessing a valid junior statewide hunting license may use no more than two (2) junior deer hunting permits. [shall not use more than:

- (a) Two (2) individual junior deer hunting permits; or
- (b) One (1) two (2) tag permit.]
- (4) A juvenile hunter shall use the tag accompanying a junior deer hunting permit as either the "antlerless" or "any deer" tag as appropriate to the season and zone.
- (5) A person whose name does not appear on the permit shall not use any portion of the deer permit.

Section 15. Tagging Deer. (1) A person exempt from purchasing a deer permit by KRS 150.170(3) shall:

- (a) Have a landowner/tenant carcass tag in his possession while hunting; and
- (b) Tag deer as stipulated in subsection (2) of this section. [tag a deer removed from the property where it was taken by:
  - (a) Writing on a card the date when, and the county where, the deer was taken;
  - (b) Signing the card; and
  - (c) Attaching the tag to the carcass:
    - 1. While transporting the carcass by vehicle; or
    - 2. Whenever the hunter is not in physical possession of the carcass.]
- (2) After taking a deer, a person [required to possess a deer permit] shall:
  - (a) Immediately after taking a deer, and before moving the carcass, cut, punch, or mark with indelible ink the appropriate tag portion of the permit to indicate the day and month the deer was taken.
  - (b) Attach the tag portion of the permit to the carcass:
    - 1. While transporting the carcass by vehicle; or
    - 2. Whenever the hunter is not in physical possession of the carcass.
- (3) A person taking a deer during the September, 1997, portion of the archery season shall:
  - (a) Write the word "Sept." on the tag with indelible ink; and
  - (b) Cut, punch, or mark with indelible ink the appropriate portion of the permit to indicate the date the deer was taken.]

Section 16. Checking Deer. After taking a deer, a person shall check the deer by:

- (1) Having [A person required to possess a deer permit shall:
  - (1) Unless] an authorized employee of the department check [checks] the deer in the field; or
  - (2) (a) Calling the toll-free telephone number provided by the department;
  - (b) Providing the information requested by the automated check-in system; and
  - (c) Writing the authorization number given by the system on the appropriate carcass tag portion of the deer permit; or
  - (3) (a) Transporting [transport] the entire or field-dressed carcass to the nearest open check station by 9 a.m. on the day after the deer was taken;
  - (b) Giving [(2) Give] a completed game check card to the person checking the deer;
  - (c) Retaining [(3) Retain] the hunter's copy of the game check card until the deer is processed; and
  - (d) Attaching [(4) Attach] the taxidermy portion of the game check card to any parts of the deer removed for mounting.

Section 17. Transporting and Processing Deer. (1) A person shall:

- (a) Not transport unchecked deer out of Kentucky.
- (b) Have proof that a deer or parts of deer brought into Kentucky were legally taken.
- (c) Not submit deer taken outside Kentucky for Kentucky trophy deer listing.
- (d) Not sell deer hides except to a licensed:
  - 1. Fur buyer;
  - 2. Fur processor; or
  - 3. Taxidermist.
- (2) A person who processes deer shall:
  - (a) Keep accurate records of the hunter's name, address and date received for each deer in his possession.
  - (b) Provide and affix to each deer a tag showing the hunter's name, address and date received. This tag shall remain on the carcass until it is processed.
  - (c) Not accept deer carcasses without proper owner identification.



VOLUME 25, NUMBER 2 – AUGUST 1, 1998

C. THOMAS BENNETT, Commissioner  
ANN R. LATTA, Secretary  
MIKE BOATWRIGHT, Chairman  
DOUGLAS SCOTT PORTER, Assistant Attorney General  
APPROVED BY AGENCY: March 6, 1998  
FILED WITH LRC: May 14, 1998 at 2 p.m.

**TOURISM DEVELOPMENT CABINET**  
**Department of Fish and Wildlife Resources**  
**(As Amended at ARRS, July 14, 1998)**

**301 KAR 2:176. Deer control tags.**

RELATES TO: KRS 150.010, 150.105, 150.170, 150.175, 150.340, 150.360, 150.390, 150.395, 150.990

STATUTORY AUTHORITY: KRS 150.105

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.105 [150.015] allows the commissioner to authorize the destruction of wildlife that is causing damage. This administrative regulation is necessary to prescribe the conditions and procedures under which deer may be taken to alleviate localized agricultural and wildlife habitat damage until it is appropriate to apply deer herd stabilization or reduction measures on a county-wide basis through regular hunting seasons.

Section 1. Definitions. (1) "Damage to wildlife habitat" means:

- (a) The existence of a browse line caused by deer; or
- (b) Damage to more than thirty-five (35) percent of native plant species preferred by deer.

(2) "Deer control tag [tags]" means a tag [special tags] issued by the department which authorizes a hunter [authorize hunters] to take antlerless deer during an open deer season.

(3) "Deer destruction permit [permits]" means written authorization from the department, pursuant to KRS 150.105, to take deer outside the regular hunting season framework.

(4) "Deer food plot" means a crop grown to attract and feed deer.

(5) "Department representative" means a department employee [person employed by the department] who is qualified and authorized by the commissioner to assess deer damage.

(6) "Landowner" means the person who has title to a particular property.

Section 2. Qualifying for Deer Control Tags. (1) A landowner [Landowners] with fewer than 1,000 contiguous acres shall qualify for deer control tags if:

(a) He has [They have] permitted deer hunting on the property during the previous deer season;

(b) Standard deterrent measures recommended by a department representative have proven ineffective or are impractical; and

(c) A department representative certifies deer damage to crops, gardens, property or wildlife habitat.

(2) A landowner with [Owners of] 1,000 contiguous acres or more shall qualify for deer control tags without evidence of damage if:

(a) He has [They have] permitted deer hunting on the property during the previous deer season;

(b) In the judgement of the department representative, regular deer seasons are inadequate to control deer populations on the property; and

(c) The landowner agrees to:

1. Follow the deer management practices recommended by the department representative; and

2. Supply the department with weight, age and condition data on deer taken from his property.

(3) A department representative shall make an on-site inspection of each property for which a request for deer control tags has been made, unless the property:

(a) Has been previously inspected by the department and the landowner affirms that deer damage still exists; or

(b) Is immediately adjacent to property assessed by a department representative as having severe deer damage.

(4) A landowner [Landowners] whose property is immediately adjacent to property assessed by a department representative as

having severe deer damage shall [may] be issued damage control tags upon request of the landowner, even if there is no evidence of deer damage on their property.

(5) The department shall not issue deer control tags to a landowner [landowners] whose only damage is to a deer food plot, [plots:]

Section 3. Applying for Deer Control Tags. (1) A landowner [Landowners] wishing to apply for deer control tags shall contact the department through:

- (a) A conservation officer;
- (b) The appropriate district wildlife biologist; or
- (c) The Division of Wildlife in Frankfort.

(2) If required by Section 2 of this administrative regulation, a department representative shall visit the property and assess the nature and extent of deer damage.

(3) A request for an assessment [Requests for assessments] shall be made on or before September 30 to be eligible for current year damage control tags.

(4) A request for an assessment [Requests for assessments] made after September 30 shall be considered for the following year.

Section 4. Number of Tags Issued. (1) The department shall determine the number of deer control tags to be issued for each landholding based on the recommendation of the department representative.

(2) Except as provided in Section 2(2) or (4) of this administrative regulation, the department shall not issue a deer control tag [tags] if:

- (a) The county deer season is adequate to achieve the desired reduction in deer numbers; or
- (b) [H] Crop or environmental damage is not present.

Section 5. Transfer of Deer Control Tags. (1) Deer control tags shall be issued in the landowner's name.

(2) A landowner [Landowners];

(a) May transfer a deer control tag [their deer control tags] to another person [persons of their choice].

(b) Shall not issue more than four (4) [two (2)] deer control tags to an individual [hunter].

(c) Shall require hunters to sign a deer control tag [tags] at the time of transfer.

(d) Shall return unissued tags to the department before January 25.

Section 6. Use of Deer Control Tags. (1) A deer control tag: [Deer control tags:]

(a) Shall not be valid except on the landholding for which it was [they were] issued.

(b) Shall expire after license year for which it was [they were] issued.

(2) A person using a deer control tag: [Hunters using deer control tags:]

(a) Shall have in his [their] possession:

1. A deer control tag with his [their] signature; and

2. A valid hunting license and the receipt portion of a current deer permit, unless exempt from license or permit requirements by KRS 150.170. [A valid hunting license;] [Unless exempt from license or permit requirements by KRS 150.170;

a. A valid hunting license; and

b. The receipt portion of a current deer permit.] [- and

3. Unless exempted by KRS 150.170, the receipt portion of a current deer permit.]

(b) May use deer control tags during archery, gun or muzzle-loader seasons to take antlerless deer.

(c) Shall not take more than four (4) [two (2)] deer per license year with deer control tags.

(d) Shall abide by the provisions of 301 KAR 2:172, except that he [they] shall:

1. Not take antlered deer;

2. Tag deer with the deer control tag rather than the carcass tag portion of the deer permit.

(3) Deer taken with a deer control tag [tags] shall not count toward the annual limit as specified in 301 KAR 2:172.

Section 7. Deer Destruction Permits. (1) The department may

issue a deer destruction permit [permits]:

- (a) To a landowner [landowners]:
  1. Who continues [continue] to experience damage after being issued deer control tags; or
  2. Whose property cannot legally be hunted.
- (b) Where deer are posing a public safety or environmental threat.
- (2) A deer destruction permit [permits] shall specify:
  - (a) The number and sex of deer to be destroyed;
  - (b) The method of destruction;
  - (c) The name of the person [names of the persons] who will destroy the deer; and
  - (d) The dates during which the destruction will take place.
- (3) A deer destruction permit [Deer destruction permits] shall not be issued without the recommendation of a representative of the department and the approval of the commissioner.
- (4) A person [Persons] destroying deer shall:
  - (a) Attach a disposal tag provided by the department to each carcass; and
  - (b) Not remove the disposal tag until the carcass is processed or disposed of.
- (5) A deer destruction permit [Deer destruction permits] shall not be used except as specified on the permit.
- (6) Nothing in this administrative regulation shall prohibit a landowner or tenant from taking action to control deer that are posing a direct and immediate threat to life or property.

Section 8. Denial or Revocation or Deer Control Tags or Destruction Permits and Appeal Procedures. (1) The department may revoke a deer control tag or destruction permit and deny a [deer control tags or destruction permits and deny] future tag or permit [tags or permits] to a person [persons] who:

- (a) Fails [Fail] to comply with the requirements of this administrative regulation;
- (b) Is [Are] convicted of a deer administrative regulation violation; or
- (c) Otherwise abuses [abuse] the Deer Control Tag Program.
- (2) An appeal [Appeals] of a revocation or a denial of eligibility shall be submitted in writing:
  - (a) To the commissioner;
  - (b) Within sixty (60) days of the date of the revocation or denial.
- (3) An appeal [Appeals] of the commissioner's decision shall be made in writing to the Fish and Wildlife Resources Commission within sixty (60) days of the commissioner's decision.
- (4) The Fish and Wildlife Resources Commission shall hear the appeal at its next regularly scheduled meeting.

C. THOMAS BENNETT, Commissioner  
 ANN R. LATTA, Secretary  
 MIKE BOATWRIGHT, Chairman  
 DOUGLAS SCOTT PORTER, Assistant Attorney General  
 APPROVED BY AGENCY: March 6, 1998  
 FILED WITH LRC: May 14, 1998 at 2 p.m.

**TOURISM DEVELOPMENT CABINET**  
**Department of Fish and Wildlife Resources**  
**(As Amended at ARRS, July 14, 1998)**

**301 KAR 2:178. Deer hunting on wildlife management areas.**

RELATES TO: KRS 150.010, 150.170, 150.175, 150.180, 150.340, 150.360, 150.370, 150.390, 150.395, 150.990  
 STATUTORY AUTHORITY: 150.025(1), 150.620  
 NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) and 150.620 grant the department authority to set hunting seasons, bag limits, methods of taking and other matters necessary to carry out the purpose of KRS Chapter 150 on wildlife management areas. This administrative regulation establishes deer hunting dates, application procedures and other matters pertaining to deer hunting on wildlife management areas that differ from statewide requirements.

Section 1. Definitions. (1) "Modern gun season" means the ten (10) consecutive-day period beginning the second Saturday in November.

- (2) "Private inholding" means privately owned property completely surrounded by a WMA.
- (3) "Quota hunt" means WMA deer hunts, including youth hunts, whose participants are selected by a random drawing.
- (4) "Statewide deer requirements" means the season dates, zone descriptions and other requirements for deer hunting established in 301 KAR 2:172 and 2:174.
- (5) "Wildlife management area or WMA" means a tract of land the department controls or manages through ownership, lease, license or cooperative agreement.
- ~~[(6) "WMA" means a wildlife management area.]~~
- ~~[(7) "WMA tag" means a carcass tag the department issues to hunters for use on WMA deer hunts.]~~

Section 2. General WMA Requirements. (1) Unless specified otherwise in this administrative regulation, statewide deer requirements shall apply to WMAs.

- (2) If specific deer hunting dates are given for a WMA in this administrative regulation, persons shall hunt deer only on those dates.
- (3) On a WMA, Westvaco Public Hunting Area [WMAs, Westvaco Public Hunting Areas], the Daniel Boone National Forest, Reelfoot National Wildlife Refuge, Land Between the Lakes and the Big South Fork National River and Recreation Area, a person:
  - (a) Shall not use nails, spikes, screw-in devices, wire or tree climbers for attaching a tree stand [stands] or climbing a tree [trees].
  - (b) May use a portable stand or climbing device [stands and climbing devices] that does not injure a tree. [do not injure trees.]
  - (c) Shall not place a portable stand in a tree more than two (2) weeks before opening day, and shall remove it [them] within one (1) week following the last day, of each hunting period.
  - (d) Shall plainly mark the portable stand with his name and address.
  - (e) Shall not use an existing permanent tree stand. [stands.]
- (4) Limits. A hunter shall not take more than one (1) deer from each of the WMAs listed in Section 5 of this administrative regulation except that statewide limits shall apply to:
  - (a) ~~[A hunter may take two (2) deer from the]~~ West Kentucky WMA;
  - (b) The Pioneer Weapons Area;
  - (c) Dewey Lake WMA;
  - (d) Higginson-Henry WMA;
  - (e) Westvaco public hunting areas [WMA]; or
  - (f) Yellowbank WMA;
  - (g) Yatesville Lake WMA.
- ~~[(b) A hunter shall not take more than one (1) deer from each of the other WMAs listed in Section 5 of this administrative regulation.]~~
- (5) The owner of a private inholding or his guest:
  - (a) May hunt on the owner's lands without application;
  - (b) Shall follow all other requirements for the WMA which surrounds the inholding.
- (6) A person shall not hunt on private inholdings when deer hunting is not allowed on the surrounding WMA.
- (7) Except to travel through a WMA on established public roads or to use areas designated open by signs, a person without a valid quota hunt permit shall not enter a WMA during quota hunts on that area.
- (8) Except if waterfowl hunting or hunting at night, a person hunting any species or a person accompanying a hunter shall wear hunter orange:
  - (a) Meeting the requirements specified in 301 KAR 2:272.
  - (b) On a WMA when firearms are permitted for deer hunting.
- (9) A person shall not:
  - (a) Enter portions of a WMA [WMAs] marked by signs as closed to public access; or
  - (b) Hunt in portions of a WMA [WMAs] marked by signs as closed to hunting.

(6) A person shall not hunt on private inholdings when deer hunting is not allowed on the surrounding WMA.

(7) Except to travel through a WMA on established public roads or to use areas designated open by signs, a person without a valid quota hunt permit shall not enter a WMA during quota hunts on that area.

(8) Except if waterfowl hunting or hunting at night, a person hunting any species or a person accompanying a hunter shall wear hunter orange:

- (a) Meeting the requirements specified in 301 KAR 2:272.
- (b) On a WMA when firearms are permitted for deer hunting.
- (9) A person shall not:
  - (a) Enter portions of a WMA [WMAs] marked by signs as closed to public access; or
  - (b) Hunt in portions of a WMA [WMAs] marked by signs as closed to hunting.

Section 3. [Quota Hunt Applications. (1) A person whose name is not drawn shall not hunt during quota hunts.

- (2) A person wishing to participate in quota hunts shall apply on forms furnished by the department.
- (3) More than one (1) person shall not apply per form.
- (4) Four (4) or fewer persons may apply as a party by stapling their applications together and mailing them in the same envelope.
- (5) A person over sixteen (16) years old shall not apply to more

than one (1) quota hunt.

(6) A person at least ten (10) but not yet sixteen (16) years old by the scheduled hunt date may apply for:

- (a) One (1) quota hunt;
- (b) One (1) Ballard WMA youth hunt; and
- (c) One (1) other youth hunt.

(7) An applicant who submits multiple applications or fails to meet application requirements shall be disqualified.

(8) An applicant shall stamp and self-address the application.

(9) An application shall be postmarked no later than August 31.

(10) The commissioner may extend the application deadline if the production or distribution of forms is delayed.

Section 4. Quota Hunt Procedures. [(4)] A person selected by random drawing for a quota hunt:

(1) [(a)] Shall hunt on assigned dates and in assigned areas;

(2) [(b)] May use firearms, archery equipment or crossbows during the quota hunt.

[(c) Unless otherwise specified in Section 5 of this administrative regulation, a person shall check in before, and check out at the completion of, the quota hunt.

(d) If checking out is not required for a quota hunt, a person shall check his deer in accordance with the provisions of Section 16 of 301 KAR 2:172.

(2) When checking in, a person shall show:

(a) A hunting license, unless exempted from license requirements by KRS 150.170;

(b) A valid quota hunt permit;

(c) Proof of identity, including Social Security number; and

(d) A current deer permit with an unfilled tag valid for the hunt; or

(e) For youth hunts, a completed hunter's portion of a current deer season game check card.

(3) A person whose name does not appear on a quota hunt permit shall not use that permit.

(4) The youth hunt permit shall admit the person whose name appears on the permit and one (1) adult. The adult shall not be required to:

(a) Possess a hunting license or deer permit; or

(b) Apply in advance.

(5) A quota youth hunt participant shall tag deer with WMA tags issued during check in.

(6) Deer taken during quota youth hunts do not count toward season limits specified in 301 KAR 2:172.

(7) A person drawn for quota hunts on Ballard, Higginson-Henry, Kleber, Taylorsville Lake and Yellowbank WMAs shall not apply to the same area quota hunt for the next three (3) seasons.]

Section 4. [5:] WMA Hunting Dates and Requirements. (1) Ballard WMA.

(a) Quota youth hunt [hunts], any deer or antlerless deer as determined by a random drawing [at check in]: two (2) consecutive days beginning[:

1:] the third Saturday in October.

[2:] The fourth Saturday in October.]

(b) Quota hunt, any deer or antlerless deer as determined by a random drawing [at check in]: the fourth [first] Saturday and Sunday of October [November].

(c) Statewide deer requirements shall apply to the 300 acre tract south of Terrell Landing Road.

(d) A person shall check out before 6 [not hunt after 5:30] p.m.

(2) Beaver Creek WMA.

(a) Archery hunt, antlered deer: the third Saturday in September through January 15, except during the quota hunt.

(b) Quota hunt, antlered deer: two (2) consecutive days beginning the first Saturday in November.

(3) Buckhorn Lake WMA shall be open under Zone 7 requirements. [closed to deer hunting:]

(4) Cane Creek WMA.

(a) Archery hunt: Zone 6 archery season dates and harvest restrictions shall apply.

(b) Gun hunt, antlered deer: two (2) consecutive days beginning the second Saturday in November.

(5) Central Kentucky WMA.

(a) Archery hunt, any deer:

1. Wednesdays between the fourth week in September through December 17, except during scheduled field trials as posted on the area bulletin board.

2. December 18 through January 15.

(b) A deer hunter shall check in and check out.

(6) Clay WMA.

(a) Archery hunt, any deer: October 15 through January 15 [the day before the modern gun season], except during the quota hunt.

(b) Quota hunt, any [antlered] deer: the first Saturday and Sunday in November.

(c) Deer hunters shall check in and check out.

(7) Cyprus AMAX-Robinson Forest WMA.

(a) A person shall not hunt deer:

1. On the main block of Robinson Forest.

2. With a firearm during the modern gun season.

(b) Archery, muzzle-loader and youth hunt [and muzzle-loader] seasons shall correspond to statewide requirements[, except that a person shall not archery hunt during the youth quota hunt.

(c) Youth quota hunt, any deer: two (2) consecutive days beginning the fourth Saturday in October.

1. A juvenile hunter and the adult who will accompany him during the hunt shall participate in a training and safety seminar.

2. The department shall notify successful applicants of the time and place of the training and safety seminar.]

(d) A deer hunter shall check in and out.

(8) Daviess County WMA shall be closed to deer hunting.

(9) Dewey Lake WMA.

(a) Archery hunts: any deer, the third Saturday in September through January 15, except persons shall not archery hunt during quota hunts.

(b) Youth quota hunt, any deer [or antlerless deer as determined by a random drawing] [at check in]: two (2) consecutive days beginning the first Saturday in November.

(c) Quota hunt, any deer or antlerless deer as determined by a random drawing at check in: two (2) consecutive days beginning the first Saturday in December.

(d) A deer hunter:

1. Shall check in and check out during quota hunts;

2. May take two (2) deer; and

3. Shall not take more than one (1) deer during a quota hunt.

(10) Fishtrap Lake WMA.

(a) Archery hunt, antlered deer: third Saturday in September through January 15, except during the quota hunt.

(b) Quota hunt, antlered deer: two (2) consecutive days beginning the fourth Saturday in November.

(11) Grayson Lake WMA.

(a) Youth quota hunts, any deer:

1. Two (2) consecutive days beginning the first Saturday in November.

2. Two (2) consecutive days beginning the first Saturday in December.

(b) Archery and crossbow hunt, any deer: the third Saturday in September through January 15.

(c) The portion of the area west of Route 1496 and east of Bruin Creek, the Bruin Creek fork of Grayson Lake, and Grayson Lake north of the Bruin Creek Fork shall be [is] open to youth quota hunting and closed to archery and crossbow hunting.

(d) A deer hunter shall check in and shall check out.

(e) Quota hunters shall check out before 6 p.m.

(12) Green River Lake WMA.

(a) Quota hunt, antlered deer: two (2) consecutive days beginning the first Saturday in December.

(b) Archery hunt, any deer: the third Saturday in September through January 15, except during the quota hunt.

(c) An archery hunter shall check in and check out.

(13) Higginson-Henry WMA.

(a) Quota hunt, any deer or antlerless deer as determined by a random drawing [at check in]: two (2) consecutive days beginning the first Saturday in December.

(b) Archery hunts.

1. Antlerless deer, the third Saturday in September through October 15.

2. Any deer, October 16 through January 15 [December 31], except during the quota hunt.

- (c) A deer hunter:  
1. Shall check in and check out;  
2. May take two (2) deer;  
3. Shall not take more than one (1) deer during a quota hunt.  
(14) Kentucky River WMA.  
(a) Quota hunts, Zone 3 [4] harvest restrictions apply:  
1. Five (5) consecutive days beginning the second Saturday in November.  
2. Five (5) consecutive days beginning the day after the first quota hunt ends.  
(b) Archery hunt, any deer: the third Saturday in September through January 15, except during the quota hunts.  
(c) Quota hunters may hunt without checking in or out.  
(d) Statewide deer requirements shall apply for muzzle-loader, crossbow, and youth hunt seasons.  
(15) Kleber WMA.  
(a) Quota hunt, any deer: two (2) consecutive days beginning the first Saturday in December.  
(b) Archery hunt, any deer: the third Saturday in October through January 15, except during the quota hunt.  
(c) Deer hunters shall check in and check out.  
(16) Lapland WMA.  
(a) Quota hunts, Zone 3 harvest restrictions apply:  
1. Five (5) consecutive days beginning the second Saturday in November.  
2. Five (5) consecutive days beginning the day after the first quota hunt ends.  
(b) Archery hunt, any deer: the third Saturday in September through January 15, except during the quota hunts.  
(c) Quota hunters may hunt without checking in or out.  
(d) Statewide deer requirements shall apply for muzzle-loader, crossbow, and youth hunt seasons.  
(17) Curtis Gates Lloyd WMA.  
(a) Quota hunts, Zone 3 harvest restrictions apply:  
1. Five (5) consecutive days beginning the second Saturday in November.  
2. Five (5) consecutive days beginning the day after the first quota hunt ends.  
(b) Archery hunt, any deer: the third Saturday in September through January 15, except during the quota hunts.  
(c) Quota hunters may hunt without checking in or out.  
(d) Statewide deer requirements shall apply for muzzle-loader, crossbow, and youth hunt seasons.  
(18) Mill Creek WMA.  
(a) Archery hunt, any deer: the third Saturday in September through January 15, except during the quota hunt.  
(b) Quota hunt, antlered deer: two (2) consecutive days beginning the first Saturday in November.  
(19) Mud Camp Creek WMA.  
(a) Quota hunts, Zone 4 harvest restrictions apply:  
1. Five (5) consecutive days beginning the second Saturday in November.  
2. Five (5) consecutive days beginning the day after the first quota hunt ends.  
(b) Archery hunt, any deer: the third Saturday in September through January 15, except during the quota hunts.  
(c) Quota hunters may hunt without checking in or out.  
(d) Statewide deer requirements shall apply for muzzle-loader, crossbow, and youth hunt seasons.  
(20) Mullins WMA.  
(a) Quota hunts, Zone 3 [4] harvest restrictions apply:  
1. Five (5) consecutive days beginning the second Saturday in November.  
2. Five (5) consecutive days beginning the day after the first quota hunt ends.  
(b) Archery hunt, any deer: the third Saturday in September through January 15, except during the quota hunts.  
(c) Quota hunters may hunt without checking in or out.  
(d) Statewide deer requirements shall apply for muzzle-loader, crossbow, and youth hunt seasons.  
(21) Obion Creek WMA.  
(a) Quota hunt, any deer: two (2) consecutive days beginning the first Saturday in November.  
(b) Archery hunt, any deer: the third Saturday in September

- through January 15, except during the quota hunt.  
(22) Paintsville Lake WMA.  
(a) Quota hunt, any [antlered] deer: two (2) consecutive days beginning the first Saturday in November.  
(b) Archery hunt, any deer: the third Saturday in September through January 15, except no archery hunting during the quota hunt.  
(c) A person participating in the quota hunt [deer hunter] shall check in and check out.  
(23) Peabody WMA.  
(a) Quota hunt, any deer: five (5) consecutive days beginning the second Saturday in November. Quota hunters may hunt without checking in or out.  
(b) Gun hunt, any deer: five (5) consecutive days beginning the day after the last day of the quota hunt.  
(c) Muzzleloader hunt, any deer: seven (7) consecutive days beginning the second Saturday in December.  
(d) Archery hunt, any deer: the third Saturday of September through January 15, except during quota hunt.  
(e) The youth hunt shall be open under statewide requirements.  
(24) Pennyrite WMA.  
(a) Quota hunt, any deer [antlered] or antlerless deer as determined by a random drawing [at-check-in]: two (2) consecutive days beginning the first Saturday in November.  
(b) Archery hunts:  
1. Antlerless deer, the third Saturday in September through October 15.  
2. Any deer, October 16 through January 15, except during the quota hunt.  
(c) Quota hunters shall check out by 6 p.m. daily.  
(d) Archery hunters shall check in and check out.  
(25) Pioneer Weapons WMA. Statewide requirements shall apply except that a person:  
(a) Shall not use a breech-loading gun;  
(b) May use a crossbow during the entire archery season.  
(26) Redbird WMA.  
(a) Archery hunt, antlered deer: the third Saturday in September through January 15, except during the gun hunt.  
(b) Gun hunt, antlered deer: two (2) consecutive days beginning the second Saturday in November.  
(c) Gun deer hunters shall check deer at the Redbird Ranger District Office.  
(27) Stewart Island WMA.  
(a) Quota hunt, any deer: two (2) consecutive days beginning on the last Saturday in October.  
(b) Quota hunt applicants shall be present at 10 a.m. central daylight time on the third Saturday of September in downtown Smithland to participate in a public drawing.  
(c) Archery hunt, any deer: the third Saturday in September through October 14.  
(28) Swan Lake WMA: closed to deer hunting.  
(29) R. F. Tarter.  
(a) Quota hunts, Zone 4 harvest restrictions apply:  
1. Five (5) consecutive days beginning the second Saturday in November.  
2. Five (5) consecutive days beginning the day after the first quota hunt ends.  
(b) Archery hunt, any deer: the third Saturday in September through January 15, except during the quota hunts.  
(c) Quota hunters may hunt without checking in or out.  
(d) Statewide deer requirements shall apply for muzzle-loader, crossbow, and youth hunt seasons.  
(30) Taylorsville Lake WMA.  
(a) Archery hunt, any deer: the third Saturday in September through January 15, except during the quota hunts.  
(b) Quota hunt, any deer:  
1. Two (2) consecutive days beginning the first Saturday in November.  
2. Two (2) consecutive days beginning the first Saturday in December.  
(c) Hunters shall check in and check out daily.  
(d) This area shall be open during the statewide youth hunt.  
(31) Tradewater WMA.  
(a) Quota hunt, any deer [antlered] or antlerless deer as determined by a random drawing [at-check-in]: two (2) consecutive days

VOLUME 25, NUMBER 2 – AUGUST 1, 1998

beginning the first Saturday in November.

(b) Archery hunts:

1. Antlerless deer, the third Saturday in September through October 15.

2. Any deer, October 16 through January 15, except during the quota hunt.

(c) Quota hunters shall check out by 6 p.m. daily.

(d) Archery hunters shall check in and check out.

(32) Twin Knobs Campground. Quota hunt, any deer: the second Saturday in December for persons with a disability which impairs their mobility.

(33) West Kentucky WMA.

(a) Archery hunts, any deer, except that a person shall not archery hunt for nine (9) consecutive days beginning the Saturday following Thanksgiving, or the day before and during quota hunts:

1. The third Saturday in September through December 10 [11] on tracts one (1) through seven (7).

2. December 14 [15] through January 15 on tracts one (1) through seven (7) and in designated posted zones.

(b) Quota hunts, any deer.

1. Two (2) consecutive days beginning the third Saturday in November.

2. Two (2) consecutive days beginning the second Saturday in December.

(c) Youth quota hunt, any deer: two (2) consecutive days beginning the first Saturday in November.

(d) Crossbow hunt, any deer: the day following the youth [first] quota hunt for twelve (12) consecutive days.

(e) A gun hunter shall not use a rifle or handgun. [Gun hunters shall not use rifles or handguns.]

(f) A person [Persons] shall not carry a firearm [firearms] in posted zones.

(g) A person shall not take more than two (2) deer from this WMA.

1. Two (2) deer may be taken by archery:

a. One (1) deer shall be antlerless and shall be tagged with a statewide tag.

b. The other deer may be antlered or antlerless and shall be tagged with a bonus quota hunt permit. [WMA tag issued on the area.]

2. One (1) deer may be taken by gun; it shall be tagged with a statewide tag or a bonus quota hunt permit. [state tag:]

3. A person shall not use more than one (1) bonus quota hunt permit on this area. [The department shall not issue more than one (1) WMA tag to an individual.]

(h) A deer hunter shall check in and check out.

(34) Westvaco public hunting areas. Statewide deer requirements apply; in addition, a person hunting on Westvaco property:

(a) Shall possess a Westvaco Hunting Permit.

(b) Shall not hunt from or place a tree stand within fifty (50) yards of the property line.

(c) The portion of the area south of Westvaco Road shall be closed to public access between November 1 and March 15.

(35) White City WMA.

(a) Archery hunt, any deer: the third Saturday in September through January 15, except during the quota hunts.

(b) Quota hunts, any deer.

1. Five (5) consecutive days beginning the second Saturday in November.

2. Five (5) consecutive days immediately following the first quota hunt.

(c) A quota hunter may hunt without checking in or out.

(36) Yatesville WMA. Statewide deer requirements apply except:

(a) A person shall not take antlerless deer during the first five (5) [two (2)] days of the modern gun season.

(b) A deer hunter shall check in and shall check out.

(37) Yellowbank WMA.

(a) The area shall be open during statewide archery and youth hunts. [Quota youth hunt, antlered or antlerless deer as determined by a random drawing at check in: two (2) consecutive days beginning the first Saturday in November.]

(b) Archery hunts:

1. Antlered deer: the third Saturday in September through October 14.

2. Any deer: October 15 through January 15, except during the quota hunt.]

(b) [(e)] A deer hunter shall check in and check out.

(c) The sex of deer to be taken during the youth hunt shall be determined by a random drawing at check in.

(d) Zone 3 harvest restrictions shall apply;

(e) A person shall not take more than one (1) deer during the youth hunt.

(38) Zilpo Campground. Quota hunt, any deer: the second Saturday in December for persons with a disability which impairs their mobility.

[Section 6. Incorporation by Reference. (1) "Application for Quota Hunt", (October, 1996 edition), Department of Fish and Wildlife Resources, is incorporated by reference.

(2) It may be inspected, copied, or obtained at Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.]

C. THOMAS BENNETT, Commissioner

ANN R. LATTI, Secretary

MIKE BOATWRIGHT, Chairman

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: March 6, 1998

FILED WITH LRC: May 14, 1998 at 2 p.m.

**TOURISM DEVELOPMENT CABINET**  
**Department of Fish and Wildlife Resources**  
**(As Amended at ARRS, July 14, 1998)**

**301 KAR 2:230. Shoot-to-retrieve field trial permits and procedures.**

RELATES TO: KRS 150.025(1), 150.170, 150.175(1)(p), [150.235, 150.237, 150.305,] 150.330[, 150.360, 150.990]

STATUTORY AUTHORITY: KRS [13A.350,] 150.025(1), 150.175(1)(p)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.175(1)(p) authorizes the department to require permits for shoot-to-retrieve field trials. KRS 150.025(1) authorizes the department to set seasons and limits, and to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 150. This administrative regulation establishes seasons, permit application procedures, game bird marking, and other requirements for conducting a shoot-to-retrieve field trial. [This administrative regulation is necessary to control hunting seasons and conditions governing shoot-to-retrieve field trials on private and government-owned lands and the game bird species allowed. The function of this administrative regulation is to provide additional hunting and dog training opportunities and to control the introduction of exotic game birds that may be detrimental to native species or the department's experimental game bird releases. It also insures that native game birds are harvested only during the regular small game hunting season. The purpose of this amendment is to create a category of licensure for single day shoot-to-retrieve field trials that do not have a license requirement exemption.]

Section 1. Definitions. (1) "Field trial" means an organized event at which hunting dogs are worked and judged.

(2) "Game birds" means quail, chukar, mallard duck or pheasant species.

(3) "Shoot to retrieve field trial" means a field trial where game birds are taken. [trials] are those in which domestically or pen-raised game birds are killed or taken by hunters or shooters participating in the event.]

(4) "Take" is defined by KRS 150.010(37).

Section 2. (1) A person may conduct a shoot-to-retrieve field trial:

(a) From August 15 through May 15 for quail; and

(b) Year-round for other game birds.

(2) Daily bag or possession limits shall not apply to birds taken during a shoot-to retrieve field trial.

Section 3. A person conducting a shoot-to retrieve field trial shall:

(1) Apply for a permit at least thirty (30) days before the event

to the:

(a) Department law enforcement officer in the county where the event will be conducted; or

(b) Department's law enforcement captain in the wildlife district where the event will be conducted.

(2) A permit application shall:

(a) Be made on a form provided the department; and

(b) Include:

1. The fee specified in 301 KAR 3:022; and

2. Permission from the landowner or manager of public land where the event will be conducted. [Apply for a permit at least thirty (30) days before the event:

(a) To:

1. The department law enforcement officer in the county where the event will be conducted; or

2. The department's law enforcement captain in the wildlife district where the event will be conducted;

(b) On a form provided by the department; and

(c) Include:

1. The fee specified in 301 KAR 3:022; and

2. Written permission from the:

a. Landowner; or

b. Manager of public land where the event will be conducted;]

(3) [(2)] Provide pen-raised game birds for the trial.

(4) [(3)] If the date or location of the trial changes:

(a) Notify the person from whom the permit application was obtained; and

(b) If the location changes, submit written permission to hold the trial at the new location.

Section 4. A person participating in a shoot-to-retrieve field trial shall not:

(1) Knowingly take a game bird that was not:

(a) Raised in captivity; and

(b) Provided by the organizer of the event.

(2) Hunt on land not specified in the permit.

Section 5. Incorporation by Reference. (1) Shoot-to-Retrieve Field Trial Application, 5/98 edition, is incorporated by reference.

(2) It may be copied, inspected or obtained at the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601 from 8 a.m. through 4:30 p.m. eastern time on normal business days.

[Section 2. Hunting Seasons and Game Birds Allowed. Domestically-reared and banded quails, August 15 through May 15 inclusive, and year-round for domestically-reared and banded chukar, pheasant and mallard duck on private and government-owned lands under a shoot-to-retrieve field trial permit issued by the department. The use of other domestically-reared game birds may be authorized by the department upon written request.

Section 3. Bag and Possession Limits. There are no bag and possession limits.

Section 4. Banding Requirements. All domestically-reared game birds listed in Section 2 of this administrative regulation must be leg banded prior to release, except mallards which must have a right hind toe clipped. Mallards must be tagged prior to transport. Bands or tags may be obtained at cost from the department at the time of application for the permit.

Section 5. Field Trial Permits, Applications and Fees. (1) At least thirty (30) days in advance, application for a shoot-to-retrieve field trial must be made through the conservation officer in whose county the trial is to be held or through the regional supervisor. Written permission of the private landowner or appropriate government authority must be obtained and submitted with the application. The permit will be issued through the department office in Frankfort. Application may be for either a four (4) day or single day field trial permit. With the four (4) day permit, all participants, whether residents or nonresidents, shall not be required to possess any other license to participate in the event for which the permit was issued. The permit shall expire four (4) days after the date on which the event began. With the single day

permit, participants must have in their possession either a resident or nonresident annual Kentucky hunting license.

(2) See 301 KAR 3:021 for the fee amount which must be submitted with the permit application.

(3) A permit is not required to conduct shoot to retrieve field trials on licensed shooting preserves during the appropriate season as specified in other administrative regulation(s). All participants, however, must be licensed according to the provisions of other administrative regulations.

Section 6. Transporting and Possession of Game Birds. Birds harvested under this administrative regulation must remain banded until prepared for cooking.

Section 7. Rescheduling and Cancellations. A scheduled shoot to retrieve field trial date or place may be changed by notifying the conservation officer, regional supervisor or appropriate government authority on or prior to the original opening date. If the place is changed, written permission of the private landowner or appropriate government authority must be submitted to the conservation officer or regional supervisor. Fees for cancelled field trials will not be refunded.

Section 8. Bird Replacement and Out-of-bounds Birds. (1) Unbanded quail harvested outside of the regular small game hunting season dates must be replaced at the end of the trial by releasing an equal number of live quail.

(2) Field trial game birds may be hunted only on the land described in the permit.]

C. THOMAS BENNETT, Commissioner

ANN R. LATTA, Secretary

MIKE BOATWRIGHT, Chairman

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: March 6, 1998

FILED WITH LRC: May 14, 1998 at 2 p.m.

**TOURISM DEVELOPMENT CABINET**  
**Department of Fish and Wildlife Resources**  
**(As Amended at ARRS, July 14, 1998)**

**301 KAR 3:030. Year-round season for some birds and animals.**

RELATES TO: KRS 150.010, 150.025, 150.330, 150.360, 150.370, 150.990

STATUTORY AUTHORITY: KRS 150.025(1), 150.360(1)

NECESSITY, FUNCTION, AND CONFORMITY: **KRS 150.025(1) authorizes the department** [KRS 150.360(1) stipulates that a person shall not take wildlife except during the open season prescribed by the department; KRS 150.025(1) grants the department authority] to establish seasons and other administrative regulations necessary to carry out the purpose of KRS Chapter 150. This administrative regulation is necessary to establish hunting requirements for species that can be taken year-round, and to specify species that are unprotected. The purpose of this amendment is to eliminate the closed season on certain species from November 1 through the gun deer season and to bring this administrative regulation into compliance with the formatting and wording requirements of KRS Chapter 13A.

Section 1. (1) Except as specified in subsection (2) of this section, a person may take coyote, wild hog, English sparrow or starling [coyotes, woodchucks, English sparrows or starlings] year round.

(2) In McCreary County, a person shall not take wild hog except:

(a) During an open deer season using legal deer hunting methods; or

(b) From January 16 through the last day of February.

(3) A person taking coyote, wild hog, woodchuck, English sparrow or starling [coyotes, woodchucks, English sparrows or starlings]:

(a) Unless exempted by KRS 150.170, shall possess:

1. A hunting license; and

2. A deer permit if he is hunting:

a. During a firearm deer [modern gun deer] season in a county or portion of a county open to deer hunting; or



VOLUME 25, NUMBER 2 – AUGUST 1, 1998

- b. During a wildlife management deer hunt where a firearm is [modern, breech-loading firearms are] allowed.  
(b) May use a hand or mouth operated call.  
(c) Shall not use an electronic or mechanical call except during daylight hours.

Section 2. (1) Except for rare, threatened or endangered species protected by federal laws, a person may take or possess:

- (a) Moles, mice, rats or shrews.  
(b) Snakes, except the copperbelly water snake (*Nerodia erythrogaster neglecta*), for which there shall not be an [be no] open season.  
(c) Lizards.  
(d) Terrestrial invertebrates.  
(2) A person may take or possess the species listed in subsection (1) of this section without:  
(a) A hunting license; or  
(b) A pet permit.

Section 3. This administrative regulation shall not prohibit a landowner or tenant from taking a species listed in Section 1(1) of this administrative regulation which is:

(1) Posing an immediate threat to:

- (a) Him; or  
(b) Another person; or

(2) Causing damage to property:

- (a) Which he owns; or  
(b) Where he resides. [Nothing in this administrative regulation shall prohibit landowners or tenants from taking the species listed in Section 1(1) of this administrative regulation which are posing an immediate threat to body or other persons, or causing damage to property which they own or where they reside.]

C. THOMAS BENNETT, Commissioner  
ANN R. LATTI, Secretary  
MIKE BOATWRIGHT, Chairman  
DOUGLAS SCOTT PORTER, Assistant Attorney General  
APPROVED BY AGENCY: March 6, 1998  
FILED WITH LRC: May 14, 1998 at 2 p.m.

DEPARTMENT OF AGRICULTURE  
Division of Pesticides  
(As Amended at ARRS, July 14, 1998)

302 KAR 31:040. Storage and handling of pesticides and bulk fertilizer.

RELATES TO: KRS Chapter 217B, 40 CFR, 49 CFR[–7 USGA 135 et seq., 42 USGA 9604]

STATUTORY AUTHORITY: KRS 217B.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 217B.050(1) authorizes the department to promulgate administrative regulations prescribing the methods of storing fertilizers and pesticides. This administrative regulation regulates [To regulate] the storage and handling of pesticides and bulk fertilizers at commercial facilities.

Section 1. Definitions. (1) "Approved" means approval by an agent of the Kentucky Department of Agriculture, except where otherwise stated.

(2) "Best management practices" means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the Commonwealth. Best management practices also includes treatment requirements, operating procedures, practices to control facility run-off, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(3) "Bulk fertilizer" means [either] dry or liquid fertilizer in any un-packaged [unpacked] quantity.

(4) "Bulk pesticide" means a pesticide that is held in a nonmobile container in an undivided quantity greater than:

- (a) 300 U.S. gallons of liquid measure; or  
(b) 300 U.S. pounds of net dry weight. [any pesticide that is held in a nonmobile container in undivided quantities of greater than

300 U.S. gallons of liquid measure or 300 U.S. pounds of net dry weight.]

(5) "Bulk repackaging" means the transfer, in an unaltered state, of a pesticide from one (1) bulk container to an approved mobile container in preparation for sale or distribution, with both containers containing undivided quantities of greater than:

(a) Fifty-five (55) U.S. gallons liquid measure; or

(b) 100 U.S. pounds net dry weight. [the transfer of a pesticide from one (1) bulk container containing undivided quantities of greater than fifty-five (55) U.S. gallons liquid measure or 100 U.S. pounds net dry weight to an approved mobile container containing undivided quantities of greater than fifty-five (55) U.S. gallons liquid measure or 100 U.S. pounds net dry weight in an unaltered state in preparation for sale or distribution.]

(6) "Commercial purposes" means selling a pesticide [pesticides] or fertilizer for compensation or other consideration.

(7) "Commercial storage facility" means a site used for a commercial purpose that, in a year, sells, uses, stores, mixes, repackages, or transfers from one (1) container to another more than:

(a) 300 U.S. gallons of liquid pesticide;

(b) 300 U.S. pounds of a dry pesticide;

(c) 5,000 U.S. gallons of a liquid bulk fertilizer; or

(d) Twenty-five (25) tons of dry bulk fertilizer. [any site used for commercial purposes that sells, uses, stores, mixes, repackages, or transfers from one (1) container to another more than 300 U.S. gallons of liquid pesticide, 300 U.S. pounds of any dry pesticide, 5,000 gallons of liquid bulk fertilizer, or twenty-five (25) tons of dry bulk fertilizer in any year.]

(8) "Elephant ring" means a temporary operational containment device:

(a) With an open top that has a storage capacity of:

1. Not less than twenty-five (25) U.S. gallons; and

2. Not more than 100 U.S. gallons; and

(b) Used for recovering spillage and leakage from a transfer connection or pump. [a temporary operational containment device with an open top that has storage capacity of no less than U.S. gallons nor more than 100 U.S. gallons and is used for recovering spillage and leakage from transfer connections and pumps.]

(9) "Fertilizer" is defined in KRS 217B.040, but for purposes of this administrative regulation shall not include anhydrous ammonia fertilizer material or fertilizer packaged for household use. [has the same meaning as defined in KRS 217B.040 except it does not include anhydrous ammonia fertilizer material or fertilizer packaged for household use.]

(10) "Impervious" means restricting the passage of water at a rate greater than 1 X 10<sup>-6</sup> centimeters per second (cm/sec).

(11) "Impregnation" means the application of a pesticide [pesticides] onto fertilizer.

(12) "Lead agency" means the Kentucky Department of Agriculture, Division of Pesticides, that shall be responsible for the enforcement of this administrative regulation. [the governing agency that will be responsible for the enforcement of these administrative regulations.]

(13) "Liquid pesticide" means any pesticide in fluid form.

(14) "Liquid fertilizer" means fertilizer in fluid form, and includes solutions, emulsions, suspensions, and slurries.

(15) "Load" means the transfer of pesticides, or bulk fertilizer from the storage facility to transport vehicles, application equipment, or mobile containers.

(16) "Low pressure nitrogen solutions" means an aqueous solution of ammonium nitrate or urea or other nitrogen carriers, containing various quantities of free ammonia exceeding two (2) percent by weight. It does not include aqua ammonia and nonpressure nitrogen solutions commonly referred to as twenty-eight (28) [percent], thirty (30) [percent], or thirty-two (32) percent nitrogen solutions.

(17) "Minibulk pesticides" means an amount of;

(a) Liquid pesticide in an undivided quantity in a mobile container designed for handling and transport that is:

1. Greater than fifty (55) U.S. gallons; and

2. Less than 300 U.S. gallons; or

(b) Dry pesticide held in an undivided quantity in a mobile container designed for handling and transport that is:

1. Greater than 100 U.S. pounds; and



**2. Less than 300 U.S. pounds.** [but not greater than 299 U.S. gallons, or an amount of dry pesticide greater than 100 U.S. pounds but not greater than 299 U.S. pounds that is held in undivided quantities in a mobile container designed for handling and transport.]

(18) "Mobile container" means a container [containers—means containers] designed and used for transporting a pesticide [pesticides] or fertilizer.

(19) "New" means a storage facility not in existence at the time of the effective date [adoption] of this administrative regulation.

(20) "Operational area" means a site at a facility where the following occurs:

(a) Loading, unloading, repackaging, mixing, impregnation, or transferring of a pesticide or fertilizer; or

(b) Rinsing, washing, or cleaning of pesticide or fertilizer application equipment. [any site at a facility where operational activities including the loading, unloading, repackaging, mixing, impregnation and transferring of pesticides or fertilizers and the rinsing, washing or cleaning of pesticide and fertilizer application equipment occur.]

(21) "Operational area containment" means any structure or system designed and constructed to effectively intercept and contain operational spills of fertilizer and pesticides including rinsate, or rain water resulting from any operational activity in an operational area.

(22) "Package pesticides" means a pesticide [all other pesticides] not defined as bulk or minibulk pesticides.

(23) "Pesticide" is defined in KRS 217B.040(2), but for purposes of this administrative regulation shall not include a pesticide packaged for household use. [has the same meaning as defined in KRS 217B.040(2) but does not include pesticides packaged for household use.]

(24) "Primary containment" means any storage container or device used to contain a bulk pesticide [bulk pesticides], fertilizer or rinsate in a storage container [storage containers] at a storage facility.

(25) "Reportable release" means an uncontrolled release of a reportable substance outside an operational area containment or secondary containment structure that equals or exceeds the reportable quantity for that substance.

(26) "Reportable quantity" means a quantity that equals or exceeds the reportable quantity for substances listed in the Appendix to 49 CFR 172.101 or in Appendix A of 40 CFR 355.

(27) "Reportable substance" means any substance listed in the Appendix to 49 CFR 172.101 or in Appendix A of 40 CFR 355.

(28) "Rinsate" means water or other liquid resulting from the washing of equipment, operational areas, or containers used in the application, loading, unloading, mixing, transferring or storing of any fertilizer or pesticide.

(29) "Roofed" means protected from precipitation.

(30) "Storage container" means a container used for the storage of fertilizer or pesticides. A storage container includes a rail car, nurse tank, or other mobile container used for the storage of bulk fertilizers or pesticides. The definition of a "storage container" does not include:

(a) A mobile container storing fertilizer or pesticide at a storage facility for less than fifteen (15) days, if this storage is incidental to the loading or unloading of a storage container at the storage facility.

(b) A container used solely for temporary emergency storage of leaking fertilizer or pesticide containers.

(31) "Secondary containment" means a dike, liner, structure, or other device used to:

(a) Contain a product spill from a primary bulk storage container; and

(b) Prevent runoff or leaching. [any structure, including dikes, liners, or other devices used to contain product spills from primary bulk storage containers; and to prevent run-off or leaching.]

(32) "Storage facility" means commercial storage facilities.

(33) "Temporary operational containment" means any structure or system designed and constructed with the capability of movement between operational areas and to intercept and contain discharges from operational activities including the loading, unloading, repackaging, impregnation, and transfer of pesticides or fertilizer or the rinsing, washing or cleaning of pesticide and fertilizer application equipment.

(34) "Unload" means the transfer of pesticide, or bulk fertilizer from the transport vehicle into the storage facility.

of Agriculture Division of Pesticides shall be [is] the designated lead agency.

(2) A commercial storage facility shall comply with this administrative regulation. [All commercial facilities shall comply with these administrative regulations.]

(3) A commercial storage facility:

(a) Shall have a written emergency response plan to be followed in the event of an emergency. A plan required by another regulatory program may be used.

(b) Shall:

1. Register with the Kentucky Department of Agriculture, Division of Pesticides within ninety (90) day after the effective date of this administrative regulation; and

2. Define the scope of the existing operation and facility pursuant to the procedures established by the department.

(c) Subject to SARA Title III (42 USCA Sec. 9601) shall:

1. Be in full compliance by the required dates; and

2. Promptly and accurately complete the required annual reporting forms. [All commercial storage facilities shall have a written emergency response plan in effect to be followed in cases of emergency. Emergency response plans required by other regulatory programs may be substituted.]

(4) All commercial storage facilities subject to SARA Title III (42 USCA 9601) shall be in full compliance by the required dates, and each facility shall promptly and accurately complete the required annual reporting forms.

(5) All commercial storage facilities shall register within ninety (90) days after the adoption of this administrative regulations with the Kentucky Department of Agriculture, Division of Pesticides, defining the scope of the existing operations and facilities pursuant to procedures established by the department.]

Section 3. Compliance Schedule. (1) On the effective date of this administrative regulation, a new facility shall come under immediate compliance. A compliance schedule shall not be in effect.

(2) On the effective date of this administrative regulation, dry bulk fertilizer material shall be stored and handled using best management practices.

(3) Within one (1) year of the effective date of this administrative regulation, a nonmobile bulk pesticide storage container shall be located within impervious secondary containment.

(4) Within two (2) years of the effective date of this administrative regulation, impregnation shall be performed within an impervious operational area containment unless performed in the field of application.

(5) Within three (3) years of the effective date of this administrative regulation, unless performed in the field of application, the loading, unloading, repackaging, or transferring of the following shall be performed within an impervious operational area containment:

(a) Bulk pesticide;

(b) Minibulk pesticide; or

(c) Liquid bulk fertilizer.

(6) Within three (3) years of the effective date of this administrative regulation, unless performed in the field of application, the rinsing, washing, or cleaning of pesticide or fertilizer application equipment shall be performed within an impervious operational area containment.

(7) Within four (4) years of the effective date of this administrative regulation, a nonmobile bulk liquid fertilizer storage container shall be located within an impervious secondary containment.

(8) Within five (5) years of the effective date of this administrative regulation, unless performed in the field of application, the loading, unloading, mixing and handling of dry bulk fertilizer shall be performed on an impervious operational containment area. [Commencing upon the date of the adoption of this administrative regulation, all new facilities shall come under immediate compliance of this administrative regulation and there will be no compliance schedule in effect.]

(2) Commencing upon the date of the adoption of these regulations, all dry bulk fertilizer materials shall be stored and handled using best management practices.

Section 2. Scope and Application. (1) The Kentucky Department

(3) Commencing one (1) year after the adoption date of this administrative regulation, all nonmobile bulk pesticide storage containers shall be located within impervious secondary containment.

(4) Commencing two (2) years after the adoption date of this administrative regulation, all impregnation unless performed in the field of application, shall be performed within an impervious operational area containment.

(5) Commencing three (3) years after the adoption date of this administrative regulation, all loading, unloading, repackaging, or transferring of bulk pesticides or minibulk pesticides or liquid bulk fertilizer, unless performed in the field of application, shall be performed within an impervious operational area containment.

(6) Commencing three (3) years after the adoption of this administrative regulation, all rinsing, washing or cleaning of pesticide or fertilizer application equipment, unless performed in the field of application, shall be performed within an impervious operational area containment.

(7) Commencing four (4) years after the adoption of this administrative regulation, all nonmobile bulk liquid fertilizer storage containers shall be located within an impervious secondary containment.

(8) Commencing five (5) years after the adoption of this administrative regulation, all loading, unloading, mixing and handling of dry bulk fertilizer, unless performed in the field of application, shall be performed on an impervious operational containment area.]

Section 4. Operational Area Site Specifications. (1) New permanent operational area containment located in a flood plain shall be protected from inundation by floods.

(2) New permanent operational area containment shall be located a minimum of 100 feet from on-site wells and sinkholes, 200 feet from private domestic wells, and 400 feet from any community wells used as a public water source.

Section 5. Primary Containment of Liquid Pesticides and Liquid Fertilizer. (1) Basic requirements.

(a) A storage container [Storage containers] and appurtenances shall be constructed, installed and maintained so as to prevent the release of liquid fertilizer or pesticides.

(b) Storage containers and appurtenances shall be constructed of materials, which are resistant to corrosion, puncture, or cracking and compatible with the product being stored.

(c) A storage container and appurtenance used for the storage of a liquid fertilizer containing potassium chloride (muriate of potash) may be constructed of ferrous materials if the following provisions are met:

1. The container and appurtenance are coated or treated with protective substances; and

2. The container or appurtenance is used for a storage period of not more than six (6) months and is completely emptied between storage periods, and the empty container and appurtenance are cleaned and inspected for leaks prior to being refilled for a subsequent period;

(d) Metals used for valves, fittings, repairs on metal containers shall be compatible with the materials used in the construction of the storage container, so that the combination of metals does not cause or increase corrosion which may weaken the storage container or its appurtenances, or create a risk of release.

(e) [(d)] Storage containers and appurtenances shall be designed to handle all operating stresses, taking into account static head, pressure buildup from pumps and compressors, and any other mechanical stresses to which the storage containers and appurtenances may be subjected to in the foreseeable course of operations.

(f) [(e)] Storage containers **shall [must]** be properly labeled according to state and federal regulations for fertilizers and pesticides during active use of the container.

(2) Prohibition against underground storage and plumbing.

(a) The storage of liquid fertilizer or pesticide in an underground storage container **shall be [is]** prohibited unless an impervious catch basin is used for the temporary collection of run-off or rinsate from containment or operational areas and it is emptied within seventy-two (72) hours of use.

(b) Underground plumbing shall be restricted to the use of concentric piping.

(3) Abandoned containers.

(a) Storage containers and other containers used at a storage facility to hold liquid bulk fertilizer or pesticide, or pesticide and fertilizer rinsate **shall be [are]** considered abandoned if they have been out of service for more than six (6) months because of a weakness or leak, or have been out of service for any reason for more than two (2) years and no integrity tests have been performed.

(b) Abandoned aboveground containers shall be thoroughly cleaned. All hatches on the containers shall be secured, and all valves or connections shall be severed or sealed.

(c) A secondary containment facility **shall not be [is not]** considered abandoned for the sole reason that there have been no releases into the secondary containment.

(4) Prohibited materials.

(a) Storage containers and appurtenances **shall [may]** not be constructed of copper, brass, zinc, or copper base alloys.

(b) Storage containers and appurtenances used for the storage of liquid fertilizers containing phosphate or chlorides shall not be constructed of aluminum alloys.

(c) Storage containers and appurtenances used for the storage of low ph (<5) liquid fertilizers **shall [may]** not be constructed of ferrous materials other than stainless steel unless the materials are coated or treated with protective substances.

(d) Storage containers and appurtenances used for the storage of low-pressure nitrogen solutions **shall [may]** not be constructed of mild steel, fiberglass, polyolefins, or plastic. This prohibition **shall [does]** not extend to nonpressure solutions commonly referred to as twenty-eight (28) [percent], thirty (30) [percent], or thirty-two (32) percent nitrogen solutions. This prohibition against the use of mild steel **shall [does]** not extend to aqua ammonia.

(e) Storage containers and appurtenances used for the storage of phosphoric acid shall not be constructed of ferrous materials other than stainless steel unless the container is lined with a suitable substance.

~~[(f) Storage containers and appurtenances used for the storage of liquid fertilizers containing potassium chloride (muriate of potash) may be constructed of ferrous materials unless the following provisions are met:~~

~~1. The containers and appurtenances are coated or treated with protective substances; and~~

~~2. The container or appurtenance is used for storage periods of not more than six (6) months, and is completely emptied between storage periods, and the empty containers and appurtenances are cleaned and inspected for leaks prior to being refilled for any subsequent period.]~~

(5) Filling storage containers. Storage containers **shall [may]** not be filled beyond the capacity for which they are designed.

(6) Pipes and fittings. Pipes and fittings shall be adequately supported to prevent sagging and possible breakage because of gravity and other forces, which may be encountered in the ordinary course of operations. Underground plumbing **shall be [is]** prohibited except as specified in subsection (2)(b) of this section.

(7) Liquid level gauging device.

(a) Every storage container shall be equipped with a liquid level-gauging device by which the level of liquid in the storage container can be readily and safely determined. A liquid level-gauging device **shall not be [is not]** required if the level of liquid in a storage container can be readily and reliably measured by other means.

(b) Liquid level gauging devices shall be secured, in a safe manner, to protect against breakage or vandalism.

(c) External sight gauges shall be prohibited.

(8) Venting. Storage containers **shall [are to]** be vented to manufacturer's specifications for the product being stored in the container.

(9) Facility inspection and maintenance by owner or operator. Inspections by the operator shall be conducted quarterly to assure the early detection of cracks and other defects that may compromise the integrity of the primary containment. Repairable defects that occur in a primary containment **shall [must]** be sealed or repaired immediately.

Section 6. Secondary Containment of Liquid Bulk Pesticide and Liquid Bulk Fertilizer. (1) **In accordance with Section 3 of this administrative regulation, a nonmobile storage container [All nonmobile storage containers]** for liquid bulk pesticides and liquid bulk fertilizer shall be located within a secondary containment.

(2) Basic requirements **shall** include:

(a) The floor and walls of a secondary containment structure shall be constructed of:

1. Concrete;
2. Concrete block that has been capped and filled with concrete;
3. Steel; or
4. Another impervious material compatible with the product being stored. [Floors and walls of secondary containment structures shall be constructed of concrete, concrete block, that has been capped and filled with concrete, steel or other impervious materials, which are compatible with the product being stored.]

(b) The floor and walls of a secondary containment structure which contains a pesticide shall be constructed of material which will maintain structural integrity under fire conditions. [Floors and walls of secondary containment structures, which contain pesticides, shall be constructed of materials, which will maintain their structural integrity under fire conditions.]

(c) Secondary containment structures shall not have relief outlets or release valves.

(d) Underground plumbing shall be prohibited except as provided in Section 5(2)(b) of this administrative regulation.

(e) Secondary containment may provide for the separation between bulk pesticides and bulk fertilizer to the extent that a common wall or curbing exists between the fertilizer and pesticide areas and shall provide for the interception and recovery including clean-up of pesticide releases. The entire secondary containment area shall meet or exceed the total capacity requirements specified in this section.

(f) [(g)] Secondary containment structures shall be cleaned and rinsed within seventy-two (72) hours after any release into the secondary containment.

(g) An inspection [(h) Inspections] shall be conducted quarterly by the owner or operator to assure the early detection of cracks or other defects that may compromise the integrity of the secondary containment. Repairable defects that occur in a secondary containment shall be sealed or repaired immediately. Inspections shall be documented in a legible and accurate form.

(h) [(i)] Containers, pipes, hoses and valves shall [must] be protected against reasonably foreseeable risks of damage by trucks and other moving vehicles.

(i) [(j)] Clay, natural soil clay mixtures, or clay or bentonite mixtures shall not be used to contain any bulk pesticide.

(j) [(k)] Temporary operational containment or elephant rings shall not be used as secondary containment for any bulk pesticide.

(k) [(l)] Secondary containment structures shall include a sump or collection point for collection of spillage, leakage, rinsate or other residues. A sump or collection point shall not [No sump or collection point shall] be greater than two (2) feet deep and shall not contain more than 109 U.S. gallons. A sump [All sumps] shall be cleaned and rinsed within seventy-two (72) hours of use.

(3) Secondary containment structures shall provide the following capacity:

(a) If [When] not roofed, the containment shall have a minimum containment volume that equals [of] a six (6) inch rain storm in a twenty-four (24) hour period, plus 100 percent of the capacity of the largest tank, and the volume displaced by the bases of the other tanks located within the secondary containment structure.

(b) If [When] roofed, the containment shall have a minimum containment volume of 100 percent of the capacity of the largest tank, plus the volume displaced by the bases of the other tanks located within the secondary containment structure.

(4) Basic requirements for the secondary containment of liquid fertilizer.

(a) Secondary containment shall be provided which meets or exceeds the requirements in subsection (2) of this section.

(b) Secondary containment shall be constructed to a water permeability rate of  $1 \times 10^{-6}$  centimeters per second and maintained so that liquid movement through the walls and base does not exceed a rate of  $1 \times 10^{-5}$  centimeters per second permeability rate. The secondary containment structure shall be designed and maintained to withstand a full hydrostatic head of any contained liquid.

(c) Synthetic materials or liners may be used as secondary containment if [provided] they are compatible with the substances being contained and are installed according to manufacturer's recommendations. These directions and recommendations shall be maintained at

the storage facility.

(d) Earthen walls used for secondary containment of fertilizer shall be protected against erosion. Side slopes shall not exceed a three (3) to one (1) ratio of horizontal to vertical. The top width of earthen walls shall not be [ne] less than two and one-half (2 1/2) feet.

(e) Provisions shall be made for safe emergency access and exit to and from the secondary containment structure.

(f) Floors shall be constructed to allow the safe and expeditious removal of precipitation or any spilled liquid to a collection point.

(g) A soil liner [Soil liners] used for secondary containment of fertilizer shall [may] be constructed of suitable soil or soil treated with bentonite clay or other comparable material, with a minimum depth of twelve (12) inches, if [provided] the other requirements stated in this section are met. The liner shall be covered by a soil or smooth aggregate layer not less than six (6) inches thick and shall be maintained to prevent cracking or puncture.

(h) Prefabricated secondary containment devices shall be constructed of a rigid prefabricated basin having both a base and walls constructed of steel, reinforced concrete or synthetic liner or synthetic materials which are resistant to corrosion, puncture or cracking.

(5) Exemptions from secondary containment.

(a) A liner shall not be [is not] required to be installed directly under a storage container having a capacity of 100,000 gallons or more which has been constructed on site and put into use prior to the effective date of these regulations, if [provided that] all the following conditions are met:

1. A second bottom made of steel shall be constructed for the storage container. The second bottom shall be placed over the original bottom and a layer of smooth fine gravel or coarse sand having a minimum thickness of three (3) inches shall be installed between the layers; and]

2. The original bottom of the storage container is tested for leaks before the sand layer or second bottom is installed. A record of the test shall be maintained at the storage facility; and]

3. The newly constructed bottom is tested for leaks before any liquid fertilizer is stored on the newly constructed bottom. A record of the test shall be maintained at the storage facility; and

4. There is a method by which leaks from the newly constructed bottom into the sand layer may be readily detected unless the storage containers are constructed of nonferrous materials which have a protection system in place consisting of synthetic liners and monitoring system.

(b) The secondary containment requirements under this section shall [do] not apply to railcars, which are periodically transferred to and from storage.

(6) A storage facility [Storage facilities] with existing secondary containment on site and in place on the date of adoption of these administrative regulations shall be exempt from this section if the following conditions are met:

(a) All requirements specified in Section 5 of this administrative regulation are met; and

(b) All requirements specified in subsection (2) of this section are met; and

(c) A minimum secondary containment capacity of 110 percent of the largest container, plus the volume displaced by the other tanks located within the secondary containment structure exists.

Section 7. Operational Containment For Pesticides and Liquid Fertilizer. (1) In accordance with Section 3 of this administrative regulation, the transfer of a pesticide or liquid fertilizer between storage containers at a commercial facility shall be performed within an impervious operational containment designed to intercept, retain, and recover an accidental release or leakage of rinsate and residue. Transfer shall include the following:

(a) Loading;

(b) Unloading;

(c) Repackaging;

(d) Impregnating;

(e) Mixing; or

(f) The cleaning of equipment. [All transfer of pesticides and liquid fertilizer between storage containers including loading, unloading, repackaging, impregnating, mixing, or equipment cleaning performed at a commercial facility shall be performed on an impervious operational containment designed to intercept, retain and recover

VOLUME 25, NUMBER 2 – AUGUST 1, 1998

~~accidental releases, leakage, rinsate and residues.]~~

(2) Temporary operational area containment may be used in lieu of impervious operational containment for loading or unloading of rail cars or barges.

(3) The basic requirements for permanent operational containment structures for a pesticide and a liquid fertilizer shall ~~[and liquid fertilizers]~~ include:

(a) The material ~~[Materials]~~ of construction and the design of a containment structure ~~[containment structures]~~ shall be compatible with the products handled and be maintained in a condition to retain recovered material until it is used or properly disposed of.

(b) Operational containment shall be constructed of reinforced concrete or other impervious materials compatible with the products being handled.

(c) The owner or operator to assure the early detection of cracks and other defects that may compromise the integrity of the operational containment structure shall conduct inspections at least quarterly. Repairable defects that occur in an operational containment structure shall be sealed or repaired immediately. Inspections shall be documented in a legible and accurate form.

(d) Stormwater drainage shall be diverted away from all ~~[any]~~ operational containment structures.

(e) Operational containment shall include a sump or collection point for the temporary collection of spillage, leakage, rinsate, or other residues. A ~~[No]~~ sump or collection point shall not be greater than two (2) feet deep nor contain more than 109 U.S. gallons. A sump ~~[All sumps]~~ shall be cleaned and rinsed within seventy-two (72) hours of use.

(f) Operational containment shall not have a relief outlet or re-lease valve ~~[relief outlets or release valves]~~.

(g) Operational containment shall be large enough in area to prevent spillage onto unprotected areas and to prevent any release to the surrounding environment.

(h) The use of underground plumbing shall be ~~[is]~~ prohibited except as provided in Section 5(2)(b) of this administrative regulation.

(4) Operational containment shall provide the following capacity:

(a) Operational area containment for a ~~roofed~~ permanent structure ~~[structures]~~ shall have a volume sufficient to contain a minimum of 1,000 U.S. gallons. Containment capacity of the sump shall be figured in addition to the containment capacity of the structure.

(b) Operational area containment for an ~~unroofed~~ permanent structure ~~[structures]~~ shall have a volume sufficient to contain a minimum of 1,250 U.S. gallons. Containment capacity of the sump shall be figured in addition to the containment capacity of the structure.

(5) ~~[(c)]~~ Temporary operational containment may be utilized to meet the requirements of this section if the following conditions are met:

(a) ~~[(1)]~~ The capacity of temporary operational containment shall not be ~~[is not]~~ less than 1,250 U.S. gallons; and

(b) ~~[(2)]~~ The temporary operational containment shall be constructed of material which is ~~[is constructed of materials which are]~~ compatible with products handled and a written copy of the manufacturer's installation directions, compatibility statement, and expected life expectancy is maintained at the storage facility; and

(c) ~~[(3)]~~ All requirements specified in subsection (3) ~~[(2)]~~ of this section are met.

(6) ~~[(d)]~~ An elephant ring may ~~[shall]~~ be utilized to meet the requirements of this section if a minimum capacity of twenty-five (25) U.S. gallons is provided for the use of recovering spillage and leakage from the transfer connections and pumps associated with the unloading of a truck, barge, or railcar ~~[trucks, barges or rail cars]~~ into a storage facility.

(7) ~~[(e)]~~ A combination of an elephant ring and concentric piping may be utilized to meet the requirements of this section if a minimum capacity of twenty-five (25) U.S. gallons is provided for the use of recovering spillage and leakage from the transfer connections and pumps associated with the loading or unloading of a railcar or barge ~~[rail cars or barges]~~.

Section 8. Containment of Dry Bulk Pesticides. (1) In accordance with Section 3 of this administrative regulation, a ~~[All]~~ nonmobile storage container ~~[containers]~~ for dry bulk pesticides shall be located within secondary containment.

(2) Dry bulk pesticide storage shall be segregated from other

containment areas and be segregated by a six (6) inch curb of an area that extends at least two (2) feet beyond the perimeter of the walls of the storage container.

Section 9. Dry Bulk Fertilizer Storage and Handling. (1) Dry bulk fertilizer material ~~[materials]~~ shall be stored and handled using best management practices.

(2) Dry bulk fertilizer ~~[fertilizers]~~ shall be stored inside a structure or device having a cover or rooftop, sidewalls and base sufficient to prevent contact with precipitation and surface waters.

(3) The ~~[All]~~ loading, unloading, mixing or handling of dry bulk fertilizer, unless performed in the field of application, shall be conducted in a manner to provide for the ~~[total]~~ collection and reuse of any spilled fertilizer.

Section 10. Containment Management. (1) A pesticide, fertilizer, pesticide residue, fertilizer residue, or rinsate ~~[Pesticides, fertilizer, pesticide or fertilizer residues, or rinsates]~~ recovered from secondary or operational containment shall be field applied at agronomic rates, used in a liquid mixing operation, or otherwise recycled or disposed of in accordance with the product's label. A pesticide residue or rinsate that is ~~[these regulations. Any pesticide residues or rinsates that are]~~ to be land applied shall be handled in accordance with the product's labels. Rinsates may be used to make up the total spray mixture if the mixture does not exceed the pesticide label application rates.

(2) Best management practices shall be used to keep rinsate, and other recovered material segregated by compatible uses.

(3) Uncontaminated precipitation collected shall be discharged from containment areas. Contaminated precipitation shall be field applied pursuant to subsection (1) of this section.

(4) Recovered or rinsate material collected in a containment system shall not be considered ~~[is not]~~ a hazardous waste unless it is determined that the rinsate or other recovered material can not be applied to a labeled target area.

Section 11. Field Mixing and Transferring. (1) In accordance with Section 3 of this administrative regulation, the following shall be performed at the field site or within operational area containment:

(a) Field mixing of a pesticide or fertilizer;

(b) Transferring of a pesticide or fertilizer; or

(c) Rinsing of a pesticide container. ~~[Field mixing, or transferring, of pesticides or fertilizers or the rinsing of pesticide containers shall be performed at the field site or within operational area containment.]~~

(2) The following shall not be conducted on a public highway, road, or street:

(a) Mixing of a pesticide or fertilizer;

(b) Transferring of a pesticide or fertilizer; or

(c) Rinsing of pesticide or fertilizer equipment. ~~[No mixing or transferring of pesticides or fertilizer or rinsing of pesticide or fertilizer equipment shall be conducted on public highways, roads, and streets.]~~

Section 12. Distribution. (1) Sale by weight or meter shall be the approved method of resale for pesticides and fertilizer. Both methods ~~[Either method]~~ shall meet the specifications, tolerances and other technical requirements for weighing and measuring devices as determined by the Kentucky Department of Agriculture.

(2) A separate meter shall be required for each product distributed for sale if the product is sold through a meter.

BILLY RAY SMITH, Commissioner

MARK FARROW, General Counsel

APPROVED BY AGENCY: March 9, 1998

FILED WITH LRC: March 9, 1998 at 9 a.m.

PUBLIC PROTECTION AND REGULATION CABINET  
Department of Financial Institutions  
(As Amended at ARRS, June 9, 1998 and As Amended at  
IJC on Banking and Insurance, June 25, 1998)

808 KAR 10:210. Registration exemptions - Federal Regulation D.

RELATES TO: KRS 292.410(1)(q), 17 CFR 230.262, 230.501, 230.504, 230.505, 230.508, 239.500 [(1992) 252(c) (d) (e) (f) (1956)], 230.504-505 [505-506] (1982), 230.508(a) (1989), as amended or made effective by Release Nos. 33-6389 (April 15, 1982), 33-6437 (December 4, 1982), 33-6663 (November 10, 1986), 33-6758 (April 11, 1988), 33-6825 (April 19, 1989)]

STATUTORY AUTHORITY: KRS 292.500(3), 17 CFR 230.262, 230.501, 230.504, 230.505, 230.508

NECESSITY, FUNCTION, AND CONFORMITY: KRS 292.500(3) authorizes the commissioner to promulgate administrative regulations necessary to carry out the provisions of KRS Chapter 292. KRS 292.410(1)(q) authorizes the commissioner to exempt from KRS 292.330 to 292.390 a transaction for which the commissioner finds that registration is not necessary or appropriate in the public interest or for the protection of an investor. This administrative regulation establishes an exemption for an offer or sale of a security that complies with specified federal regulations and the requirements established in the administrative regulation.

Section 1. (1) Pursuant to KRS 292.410(1)(q), an offer or sale of a security offered or sold in compliance with 17 CFR 230.504 or 230.505, or an offer or sale made exempt by 17 CFR 230.508(a) shall be exempt from KRS 292.340 to 292.390 if the offer or sale meets the requirements established in subsections (3) and (4) of this section.

(2) A person who receives a commission, finder fee, or other remuneration in connection with a sale of a security made pursuant to the exemption established in subsection (1) of this section shall not be relieved of compliance with the requirements of KRS 292.330.

(3) The exemption established in subsection (1) of this section shall apply if:

(a) [To declare that registration is not necessary in the public interest for certain business transactions pursuant to KRS 292.410(1)(q):

Section 1. The following federal regulations and releases are adopted without change: 17 CFR 230.262 (1992), 230.501, 504-505 [230.252(c) (d) (e) (f) (1956), 230.505-506] (1982), 230.508(a) (1989), as amended or made effective by Release Nos. 33-6389 (April 15, 1982), 33-6437 (December 4, 1982), 33-6663 (November 10, 1986), 33-6758 (April 11, 1988), and 33-6825 (April 19, 1989)

Section 2. Pursuant to KRS 292.410(1)(q), the commissioner, having found that registration is not necessary or appropriate in the public interest or for the protection of investors, exempts the transaction in subsection (1) of this section [the following transaction is determined to be exempt] from the registration provisions of KRS 292.340 through KRS 292.390.

(1) Any offer or sale of securities offered or sold in compliance with Securities Act of 1933, Regulation D, either 230.504 or 230.505 [230.505 or 230.506], including any offer or sale made exempt by application of Rule 508(a), as made effective in Release No. 33-6389 and as amended in Release Nos. 33-6437, 33-6663, 33-6758, 33-6825 and which satisfies the following further conditions and limitations:

(a) Persons receiving commissions, finders fees, or other remuneration in connection with sales of securities in reliance on this administrative regulation are not relieved of compliance with KRS 292.330.

(b) The issuer does not offer or sell the security [securities] by means of a form of general advertisement or general solicitation except as permitted by 17 CFR 230.504. The following shall not constitute "general solicitation" within the meaning of this paragraph [section]:

1. Solicitation of an indication [indications] of interest in accordance with the applicable [such] terms and conditions [as the commissioner may adopt by administrative regulation]; or

2. An offer to sell a security [Offers to sell securities] and the dissemination of written offering material [materials] in accordance with the terms of this administrative regulation at least thirty (30) days after the withdrawal of an application by the issuer to register the same class of securities;

(b)1. (e) The issuer reasonably believes that each purchaser of the securities in Kentucky is:

a. Acquiring the security [securities] for investment; and  
b. [is] Aware of the [any] restrictions imposed on transferability and resale of a security [the securities].

2. The basis for reasonable belief may include:

a. [1.] Obtaining a written representation signed by the purchaser that the purchaser is acquiring the security [securities] for the purchaser's own investment and is aware of the [any] restrictions imposed on the transferability and resale of the security [securities]; and  
b. [2.] Placement of a legend on the certificate or other document that evidences the security [securities] stating that the security [securities] have not been registered under KRS Chapter 292, and setting forth or referring to the restrictions on transferability and sale of security [securities].

(c) No exemption under this rule shall be available for the securities of any issuer, if any of the parties or persons described in Securities Act of 1933, Regulation A, Rule 230.262 [230.252, Sections (c), (d), (e) or (f)]:

1. Has filed a registration statement which is the subject of a currently effective stop order entered pursuant to any federal or state law within five (5) years prior to the commencement of the offering;

2. Has been convicted within five (5) years prior to commencement of the offering of any felony or misdemeanor in connection with the purchase or sale of any security or any felony involving fraud or deceit including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud;

3. Is currently subject to any federal or state administrative order or judgment entered by that state's securities administrator within five (5) years prior to reliance on this exemption or is subject to any state's administrative order or judgment in which fraud or deceit was found and the order or judgment was entered within five (5) years of the expected offer and sale of securities in reliance upon this exemption;

4. Is currently subject to any state's administrative order or judgment which prohibits the use of any exemption from registration in connection with the purchase or sale of securities;

5. Is subject to any order, judgment or decree of any court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to any order, judgment or decree of any court of competent jurisdiction, entered within five (5) years prior to the commencement of the offering permanently restraining or enjoining, such person from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of any false filing with any state;

6. The prohibitions of subparagraphs 1, 2, [through] 3 and 5 of this paragraph shall not apply if the person subject to the disqualification is duly licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against such person or if the broker/dealer employing such person is licensed or registered in this state and the Form BD filed with this state discloses the order, conviction, judgment or decree relating to such person;

7. Any disqualification caused by this section is automatically waived if the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied. It is a defense to a violation of this subsection if issuer sustains the burden of proof to establish that he or she did not know and in the exercise of reasonable care could not have known that a disqualification under the subsection existed;

(c)1. (e) (e) The issuer shall file with the department [of Financial Institutions] a notice on Form D (17 CFR 239.500);

a. No later than fifteen (15) days after the first sale of a security [securities] from or into Kentucky [this state] in the case of a transaction pursuant to 17 CFR 230.505; or

b. [Rule 505, or] At least ten (10) business days prior to the first sale of a security [securities] from or into Kentucky [this state] in the



case of a transaction pursuant to 17 CFR 230.504.

2. During the time specified in subparagraph 1 of this paragraph, ~~[Rule 504 during which time]~~ the department shall not have determined that the exemption provided by this administrative regulation is not available, ~~[or to an investor in this state which results from an offer being made in reliance upon this exemption.]~~

3. A ~~[1- Every]~~ notice on Form D shall be manually signed by a person duly authorized by the issuer.

4.a. ~~[2- Any]~~ Information furnished by the issuer to an offeree ~~[offerees]~~ shall be filed with the notice required by subparagraph 1 of this paragraph.

b. ~~If the information is altered in a [pursuant to this paragraph and; if such information is altered in any] material way during the course of the offering, the department [of Financial Institutions] shall be notified of the [such] amendment within fifteen (15) days after an offer using the [such] amended information.~~

5. ~~[3-]~~ At the time of filing of the notice on Form D, the issuer shall pay to the commissioner a filing fee of \$250. ~~[There is no filing fee.]~~

6. ~~If [4- In the event that] the issuer files an [any] additional document [documents] with the United States Securities and Exchange Commission subsequent to its initial filing, a copy of the document [copies of same] shall be filed with the department [of Financial Institutions].~~

~~(d) 1. An issuer selling a security in reliance on this exemption furnishes written information to a prospective investor to comply with the antifraud provisions of KRS Chapter 292 and applicable federal law.~~

2. In an offering in reliance on 17 CFR 230.504 to a person who is not an accredited investor, the department shall consider the information provided to a prospective investor in determining whether the exemption established by this administrative regulation is available; and

~~(e) In a sale to a nonaccredited investor pursuant to 17 CFR 230.504, the issuer and a~~

~~[(f) Issuers selling securities in reliance on this administrative regulation should consider furnishing written information to prospective investors in view of the antifraud provisions of this chapter and federal securities laws. In any offering in reliance on Rule 504 to persons who are not accredited investors, the department may consider the information to be provided to prospective investors in determining whether the exemption provided by this administrative regulation is available.~~

~~(g) [(d)] In all sales to nonaccredited investors pursuant to Rule 504 the issuer and any person acting on his [its] behalf shall have reasonable grounds to believe, and after making reasonable inquiry shall believe, that [both of the following conditions are satisfied:~~

~~1- The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his other security holdings and as to his financial situations and needs. For the limited purpose of this condition only, it may be presumed that if the investment does not exceed ten (10) percent of the investor's net worth, it is suitable;~~

~~2- the purchaser either alone or with his [or her] [his/her] purchaser representative[s)] has the [such] knowledge and experience in financial and business matters that he [or she] [he/she] is [or they are] capable of evaluating the merits and risk of the prospective investment.~~

~~(4)(a) Except as provided in paragraph (b) of this subsection, the exemption established in subsection (1) of this section shall not apply if the issuer or a person described in 17 CFR 230.262:~~

~~1. Has filed a registration statement which is the subject of a currently effective stop order entered pursuant to a federal or state law within five (5) years prior to the commencement of the offering;~~

~~2. Has been convicted within five (5) years prior to commencement of the offering of a felony or misdemeanor in connection with the purchase or sale of a security or a felony involving fraud or deceit including forgery, embezzlement, obtaining money under false pretenses, larceny or conspiracy to defraud;~~

~~3. Is currently subject to a federal or state administrative order or judgment entered by that state's securities administrator within five (5) years prior to reliance on this exemption or is subject to a state's administrative order or judgment in which fraud or deceit was found and the order or judgment was entered within five (5) years of the expected offer and sale of a security in reliance upon this exemption;~~

~~4. Is currently subject to a state's administrative order or judgment which prohibits the use of an exemption from registration in connection with the purchase or sale of a security; or~~

~~5. Is subject to an order, judgment or decree of a court of competent jurisdiction temporarily or preliminarily restraining or enjoining, or is subject to an order, judgment or decree of a court of competent jurisdiction, entered within five (5) years prior to the commencement of the offering permanently restraining or enjoining, the person from engaging in or continuing a conduct or practice in connection with the purchase or sale of a security or involving the making of a false filing with a state.~~

~~(b) The prohibitions of paragraph (a) 1, 2, 3 and 5 of this subsection shall not apply if:~~

~~1. The person subject to the disqualification is duly licensed or registered to conduct securities related business in the state in which the administrative order or judgment was entered against the person; or~~

~~2. The broker-dealer employing the person is licensed or registered in Kentucky and the Form BD filed with Kentucky discloses the order, conviction, judgment or decree relating to the person.~~

~~(c) A disqualification pursuant to paragraph (a) of this subsection shall be automatically waived if the state which created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances that the exemption be denied.~~

~~(d) It shall be a defense to a violation of paragraph (a) of this subsection if the issuer sustains the burden of proof to establish that he did not know, and in the exercise of reasonable care could not have known, that a disqualification under paragraph (a) of this subsection existed.~~

~~(5) [(2)] A failure to comply with a term, condition or requirement established in subsection (2) or (3)(c) or (d) of this section shall [of subsection (1)(a), (e) and (f) [(c) and (d)] of this section will] not result in loss of the exemption for a [any] new offer or sale to a particular individual or entity if the person relying on the exemption shows:~~

~~(a) The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity; [and]~~

~~(b) The failure to comply was insignificant with respect to the offering as a whole; and~~

~~(c) A good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of [subsection (1)(a), (e) and (d) of] this section.~~

~~(6) If [(3) Where] an exemption is established only through reliance upon subsection (5) [(2)] of this section, the failure to comply shall [nonetheless] be actionable by the commissioner.~~

~~(7)(a) An offer or sale which is exempt pursuant to this administrative regulation shall not be combined with an offer or sale exempt under another administrative regulation or KRS Chapter 292.~~

~~(b) If an offer or sale fails to comply with all the conditions for this exemption, the issuer may claim the availability of another applicable exemption.~~

~~(8) This exemption shall not relieve an issuer or a person acting on behalf of an issuer from the requirement to provide disclosure to a prospective investor to satisfy the antifraud provisions established within KRS Chapter 292.~~

~~[(4) Offers and sales which are exempt under this rule may not be combined with offers and sales exempt under any other rule or section of this Act, however, nothing in this limitation shall act as an election. Should for any reason the offers and sales fail to comply with all of the conditions for this exemption, the issuer may claim the availability of any other applicable exemption.~~

~~(5) Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of this state's securities law.]~~

~~(9) In a [(6) In any] proceeding involving this administrative regulation [rule], the burden of proving the exemption or an exception from a definition or condition shall be [is] upon the person claiming it.~~

~~(10) The exemption established in this administrative regulation shall not be available to an issuer for a transaction which is:~~

~~(a) In technical compliance with the requirements of this administrative regulation; and~~

~~(b) Part of a plan or scheme to evade registration or the re-~~

quirements of this administrative regulation.

Section 2. Adoption Without Change. The offer or sale of a security offered or sold pursuant to Federal Regulation D is governed by:

- (1) 17 CFR 230.262, August 13, 1992;
- (2) 17 CFR 230.501, March 20, 1989;
- (3) 17 CFR 230.504, June 14, 1996;
- (4) 17 CFR 230.505, August 13, 1992; and
- (5) 17 CFR 230.508, August 13, 1992.

Section 3. Incorporation by Reference. (1) Form B-D, "Application for Registration as Broker-Dealer", July 1988 edition, is incorporated by reference.

(2) It may be inspected, copied, or obtained at the Department of Financial Institutions, 477 Versailles Road, Frankfort, Kentucky, 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

(3) A copy may also be obtained from the National Association of Securities Dealers (NASD), 1735 K Street, N.W., Washington, D.C., 20006, or a regional NASD office.

[(7) In view of the objective of this rule and the purpose and policies underlying the securities act, the exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this rule.]

ARTHUR FREEMAN, Commissioner

COLLEEN KEEFE, Staff Attorney

APPROVED BY AGENCY: March 12, 1998

FILED WITH LRC: March 13, 1998 at 11 a.m.

**CABINET FOR HEALTH SERVICES  
Office of Inspector General  
(As Amended at ARRS, July 14, 1998)**

**902 KAR 20:026. Operations and services; skilled nursing facilities.**

RELATES TO: KRS 216B.010 to 216B.131, 216B.990  
STATUTORY AUTHORITY: KRS 216B.042, 216B.105,  
**311.560(3), (4), 314.011(8), 314.042(8), 320.210(2), EO 96-862**

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 mandate that the Cabinet for Health Services [Human Resources] regulate health facilities and health services. This administrative regulation establishes licensure requirements for the operation of skilled nursing facilities. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.

Section 1. Definitions. (1) "Administrator" means a person who is licensed as a nursing home administrator pursuant to KRS 216A.080.

(2) ~~["Board" means the Commission for Health Economics Control in Kentucky:~~

~~{(3)} "Facility" means a skilled nursing facility.~~

~~{(3)} {(4)} "License" means an authorization issued by the cabinet for the purpose of operating a skilled nursing facility and offering skilled nursing services.~~

~~{(4)} {(5)} "Occupational therapist" means a person who is registered by the American Occupational Therapy Association or a graduate of a program in occupational therapy approved by the Council on Medical Education of the American Medical Association in collaboration with the American Occupational Therapy Association and who is engaged in or has completed the required supervised clinical experience period prerequisite to registration by the American Occupational Therapy Association.~~

~~{(6)} "Speech pathologist" means a person who:~~

~~(a) Meets the education and experience requirements for a Certificate of Clinical Competence in the appropriate area (speech pathology or audiology) granted by the American Speech and Hearing Association; or~~

~~(b) Meets the educational requirements for certification and is in the process of accumulating the supervised experience required for~~

~~certification:]~~

~~{(5)} {(7)} "Qualified dietitian" or "nutritionist" means:~~

~~(a) A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietitian by ADA; or~~

~~(b) A person who has a masters degree in nutrition and is a member of ADA or is eligible for registration by ADA; or~~

~~(c) A person who has a bachelor of science degree in home economics and three (3) years of work experience with a registered dietitian.~~

~~{(6)} {(8)} "Qualified medical record practitioner" means a person who has graduated from a program for medical record administrators or technicians accredited by the Council on Medical Education of the American Medical Association and the American Medical Record Association; and who is certified as a Registered Records Administrator or an Accredited Record Technician by the American Medical Record Association.~~

~~{(7)} {(9)} "Qualified social worker" means a person who is licensed pursuant to KRS 335.090, if applicable, and who is a graduate of a school of social work accredited by the Council on Social Work Education.~~

~~{(10)} "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt:]~~

~~{(8)} {(11)} "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.~~

~~{(9)} "Speech pathologist" means a person who:~~

~~(a) Meets the education and experience requirements for a certificate of clinical competence in the appropriate area (speech pathology or audiology) granted by the American Speech and Hearing Association; or~~

~~(b) Meets the educational requirements for certification and is in the process of accumulating the supervised experience required for certification.~~

Section 2. Scope of Operations and Services. Skilled nursing facilities are establishments with permanent facilities including inpatient beds. Services provided include medical services, and continuous nursing services to provide treatment for patients. Patients in a skilled nursing facility are patients who require inpatient care but are not in an acute phase of illness, and who currently require primarily convalescent or rehabilitative services and have a variety of medical conditions.

Section 3. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for the facility and for compliance with federal, state and local laws and regulations pertaining to the operation of the facility.

(2) Administrator. All facilities shall have an administrator who is responsible for the operation of the facility and who shall delegate such responsibility in his absence.

(3) Policies. The facility shall establish written policies and procedures that govern all services provided by the facility. The written policies shall include:

(a) Personnel policies, practices and procedures that support sound patient care.

(b) Notification of changes in patient status and service cost. There shall be written policies and procedures relating to notification of responsible person(s) in the event of significant changes in patient status, patient charges, billings, and other related administrative matters.

(c) Patient care policies. The facility shall have written policies to govern the skilled nursing care and related medical and other services provided, which shall be developed with the advice of professional personnel, including one (1) or more physicians and one (1) or more registered nurses and other health personnel (e.g., social workers, dietitians, pharmacists, speech pathologists and audiologists, physical and occupational therapists and mental health personnel). Pharmacy policies and procedures shall be developed with the advice of a subgroup of physicians and pharmacists who serve as a pharmacy and



therapeutics committee. A physician or a registered nurse shall be responsible for assuring compliance with and annual review of these policies. In addition to written policies for services, the facility shall have written policies to include:

1. Admission, transfer, and discharge policies including categories of patients accepted and not accepted by the facility.

2. Medication stop orders;
3. Medical records;
4. Transfer agreement;
5. Utilization review; and
6. Use of restraints.

(d) Adult and child protection. The facility shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children [to the Cabinet for Human Resources] pursuant to KRS Chapters 209 and 620.

(e) Missing patient procedures. The facility shall have a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a patient is determined to be lost, unaccounted for or on other unauthorized absence.

(4) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(5) Admission.

(a) Patients shall be admitted only upon the referral of a physician. Additionally, the facility shall admit only persons who require medical and continuous skilled nursing care and who currently require primarily convalescent or rehabilitative services for a variety of medical conditions. The facility shall not admit persons whose care needs exceed the capability of the facility.

(b) Upon admission the facility shall obtain the patient's medical diagnosis, physician's orders for the care of the patient and the transfer form. The facility shall obtain a medical evaluation within forty-eight (48) hours of admission, unless an evaluation was performed within five (5) days prior to admission. The medical evaluation shall include current medical findings, rehabilitation potential, a summary of the course of treatment followed in the hospital or intermediate care facility (a current hospital discharge summary containing the above information shall be acceptable).

(c) If the physician's orders for the immediate care of a patient are unobtainable at the time of admission, the facility shall contact the physician with responsibility for emergency care to obtain temporary orders.

(d) Before admission the patient and a responsible member of his family or committee shall be informed in writing of the established policies of the facility to include: fees, reimbursement, visitation rights during serious illness, visiting hours, type of diets offered and services rendered.

(6) Discharge planning. The facility shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(7) Transfer and discharge. The facility shall comply with the requirements of 900 KAR 2:050 when transferring or discharging residents. [Transfer procedures and agreements.]

(a) The facility shall have written transfer procedures and agreements for the transfer of patients to other health care facilities which can provide a level of inpatient care not provided by the facility. Any facility which does not have a transfer agreement in effect but which documents a good faith attempt to enter into such an agreement shall be considered to be in compliance with the licensure requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients, shall establish responsibility for notifying the other institution promptly of the impending transfer of a patient, and shall arrange for appropriate and safe transportation.

(b) When the patient's condition exceeds the scope of services of the facility, the patient, upon physician's orders (except in cases of emergency), shall be transferred promptly to an appropriate level of care.

(c) The agreement shall provide for the transfer of personal effects, particularly money and valuables, and for the transfer of information related to these items.

(d) When a transfer is to another level of care within the facility, the complete patient record or a current summary thereof shall be transferred with the patient.

(e) If the patient is transferred to another health care facility or

home to be cared for by a home health agency, a transfer form shall accompany the patient. The transfer form shall include at least the following: physician's orders (if available), current information relative to diagnosis with history of problems requiring special care, a summary of the course of prior treatment, special supplies or equipment needed for patient care, and pertinent social information on the patient and his family.

(f) Except in an emergency, the patient, his next of kin, or responsible person[s] if any, and the attending physician shall be consulted in advance of the transfer or discharge of any patient.

(8) Tuberculosis testing. All employees and patients shall be tested for tuberculosis in accordance with the provisions of 902 KAR 20:200, tuberculosis testing in long term care facilities.

(9) Personnel.

(a) Job descriptions. Written job descriptions shall be developed for each category of personnel to include qualifications, lines of authority and specific duty assignments.

(b) Employee records. Current employee records shall be maintained and shall include a resume of each employee's training and experience, evidence of current licensure or registration where required by law, health records, evaluation of performance, records of in-service training and ongoing education, along with employee's name, address and social security number.

(c) Health requirements. No employee contracting an infectious disease shall appear at work until the infectious disease can no longer be transmitted.

(d) Staffing classification requirements.

1. The facility shall have adequate personnel to meet the needs of the patients on a twenty-four (24) hour basis. The number and classification of personnel required shall be based on the number of patients, and the amount and kind of personal care, nursing care, supervision, and program needed to meet the needs of the patients, as determined by medical orders and by services required by this administrative regulation.

2. If the staff to [f] patient ratio does not meet the needs of the patients, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification, and shall give the basis for this determination.

3. The facility shall have a director of nursing service who is a registered nurse and who works full time during the day, and who devotes full time to the nursing service of the facility. If the director of nursing has administrative responsibility for the facility, there shall be an assistant director of nursing, who shall be a registered nurse, so that there shall be the equivalent of a full-time director of nursing service. The director of nursing shall be trained or experienced in areas of nursing service, administration, rehabilitation nursing, psychiatric or geriatric nursing. The director of the nursing service shall be responsible for:

a. Developing and maintaining nursing service objectives, standards of nursing practice, nursing procedure manuals, and written job descriptions for each level of nursing personnel;

b. Recommending to the administrator the number and level of nursing personnel to be employed, participating in their recruitment and selection, and recommending termination of employment when necessary;

c. Assigning and supervising all levels of nursing personnel;

d. Participating in planning and budgeting for nursing care;

e. Participating in the development and implementation of patient care policies and bringing patient care problems requiring changes in policy to the attention of the professional policy advisory group;

f. Coordinating nursing services with other patient care services;

g. Planning and conducting orientation programs for new nursing personnel and continuing in-service education for all nursing personnel;

h. Participating in the selection of prospective patients in terms of nursing services they need and nursing competencies available;

i. Assuring that a nursing care plan shall be established for each patient and that his plan shall be reviewed and modified as necessary;

j. Assuring that registered nurses, licensed practical nurses, nurses' aides and orderlies are assigned duties consistent with their training and experience.

4. Supervising nurse. Nursing care shall be provided by or under the supervision of a full-time registered nurse. The supervising nurse

shall be a licensed registered nurse who may be the director of nursing or the assistant director of nursing and shall be trained or experienced in the areas of nursing administration and supervision, rehabilitative nursing, psychiatric or geriatric nursing. The supervising nurse shall make daily rounds to all nursing units performing such functions as visiting each patient, and reviewing medical records, medication cards, patient care plans, and staff assignments, and whenever possible accompanying physicians when visiting patients.

5. Charge nurse. There shall be at least one (1) registered nurse or licensed practical nurse on duty at all times and who is responsible for the nursing care of patients during her tour of duty. When a licensed practical nurse is on duty, a registered nurse shall be on call.

6. Pharmacist. The facility shall employ a licensed pharmacist on a full-time, part-time or consultant basis to direct pharmaceutical services.

7. Therapists.

a. If rehabilitative services beyond rehabilitative nursing care are offered, whether directly or through cooperative arrangements with agencies that offer therapeutic services, these services shall be provided or supervised by qualified therapists to include licensed physical therapists, speech pathologists and occupational therapists.

b. When supervision is less than full time, it shall be provided on a planned basis and shall be frequent enough, in relation to the staff therapist's training and experience, to assure sufficient review of individual treatment plans and progress.

c. In a facility with an organized rehabilitation service using a multidisciplinary team approach to meet all the needs of the patient, and where all therapists' services are administered under the direct supervision of a physician qualified in physical medicine who will determine goals and limits of the therapists' work, and prescribes modalities and frequency of therapy, persons with qualifications other than those described in subsection (8)(d)7a of this section may be assigned duties appropriate to their training and experience.

8. Dietary. Each facility shall have a full-time person designated by the administrator, responsible for the total food service operation of the facility and who shall be on duty a minimum of thirty-five (35) hours each week.

9. The administrator shall designate a person for each of the following areas who will be responsible for:

a. Medical records. The person responsible for the records shall maintain, complete and preserve all medical records. If the person is not a qualified medical record practitioner he shall be trained by and receive regular consultation from a qualified medical record practitioner.

b. Social services. There shall be a full-time or part-time social worker employed by the facility, or a person who has training and experience in related fields to find community resources, to be responsible for the social services. If the facility does not have a qualified social worker on its staff, consultation shall be provided by a qualified social worker. The person responsible for this area of service shall have information promptly available on health and welfare resources in the community.

c. Patient activities. This person shall have training or experience in directing group activities.

(e) In-service educational programs.

1. There shall be an in-service education program in effect for all nursing personnel at regular intervals in addition to a thorough job orientation for new personnel. Opportunities shall be provided for nursing personnel to attend training courses in rehabilitative nursing and other educational programs related to the care of long-term patients. Skill training for nonprofessional nursing personnel shall begin during the orientation period, to include demonstration, practice and supervision of simple nursing procedures applicable in the individual facility. It shall also include simple rehabilitative nursing procedures to be followed in emergencies. All patient care personnel shall be instructed and supervised in the care of emotionally disturbed and confused patients, and shall be assisted to understand the social aspects of patient care.

2. Social services training of staff. There shall be provisions for orientation and in-service training of staff directed toward understanding emotional problems and social needs of sick and infirm aged persons and recognition of social problems of patients and the means of taking appropriate action in relation to them. Either a qualified social worker on the staff, or one (1) from outside the facility, shall participate

in training programs, case conferences, and arrangements for staff orientation to community services and patient needs.

(10) Medical records.

(a) The facility shall develop and maintain a system of records retention and filing to insure completeness and prompt location of each patient's record. The records shall be held confidential. The records shall be in ink or typed and shall be legible. Each entry shall be dated and signed. Each record shall include:

1. Identification data including the patient's name, address and social security number (if available); name, address and telephone number of referral agency; name and telephone number of personal physician; name, address and telephone number of next of kin or other responsible person; and date of admission.

2. Admitting medical evaluation including current medical findings, medical history, physical examination and diagnosis. (The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital, or an intermediate care facility if done within five (5) days prior to admission.)

3. [The physician's] Orders for medication, diet, and therapeutic services. These shall be dated and signed by the prescribing physician, [or] advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), [or] therapeutically-certified optometrist in the practice of optometry as defined in KRS 320.210(2), or physician assistant as authorized in KRS 311.560(3) and (4).

4. Physician's progress notes describing significant changes in the patient's condition, written at the time of each visit.

5. Findings and recommendations of consultants.

6. A medication sheet which contains the date, time given, name of each medication or prescription number, dosage and name of prescribing physician, [or] advanced registered nurse practitioner, [or] therapeutically-certified optometrist, or physician assistant.

7. Nurse's notes indicating changes in patient's condition, actions, responses, attitudes, appetite, etc. Nursing personnel shall make notation of response to medications, response to treatments, visits by physician and phone calls to the physician, medically prescribed diets and restorative nursing measures.

8. Nursing supervisor's written assessment of the patient's monthly general condition.

9. Reports of dental, laboratory and x-ray services.

10. Changes in patient's response to the activity and therapeutic recreation program.

11. A discharge summary completed, signed and dated by the attending physician within one (1) month of discharge from the facility.

(b) Retention of records. After death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

Section 4. Provision of Services. (1) Physician services.

(a) The health care of each patient shall be under supervision of a physician who, based on an evaluation of the patient's immediate and long-term needs, prescribes a planned regimen of medical care which covers indicated medications, treatments, rehabilitative services, diet, special procedures recommended for the health and safety of the patient, activities, plans for continuing care and discharge.

(b) Patients shall be evaluated by a physician at least once every thirty (30) days for the first ninety (90) days following admission. Subsequent to the 90th day following admission, the patients shall be evaluated by a physician every sixty (60) days. There shall be evidence in the patient's medical record of the physician's visits to the patient at appropriate intervals.

(c) There shall be evidence in the patient's medical record that the patient's attending physician has made arrangement for the medical care of the patient in the physician's absence.

(d) Availability of physicians for emergency care. The facility shall have arrangements with one (1) or more physicians who will be available to furnish necessary medical care in case of an emergency if the physician responsible for the care of the patient is not immediately available. A schedule listing the names and telephone numbers of these physicians and the specific days each shall be on call shall be posted in each nursing station. There shall be established procedures to be followed in an emergency, which cover immediate care of the patient, persons to be notified, and reports to be prepared.

(2) Nursing services.

(a) Twenty-four (24) hour nursing service. There shall be twenty-four (24) hour nursing service with a sufficient number of nursing personnel on duty at all times to meet the total needs of patients. Nursing personnel shall include registered nurses, licensed practical nurses, aides and orderlies. The amount of nursing time available for patient care shall be exclusive of nonnursing duties. Sufficient nursing time shall be available to assure that each patient:

1. Shall receive treatments, medication, and diets as prescribed;
2. Shall receive proper care to prevent decubiti and shall be kept comfortable, clean and well-groomed;
3. Shall be protected from accident and injury by the adoption of indicated safety measures;

1. Shall be treated with kindness and respect.

(b) Rehabilitative nursing care. There shall be an active program of rehabilitative nursing care directed toward assisting each patient to achieve and maintain his highest level of self-care and independence.

1. Rehabilitative nursing care initiated in the hospital shall be continued immediately upon admission to the facility.

2. Nursing personnel shall be taught rehabilitative nursing measures and shall practice them in their daily care of patients. These measures shall include:

a. Maintaining good body alignment and proper positioning of bedfast patients;

b. Encouraging and assisting bedfast patients to change positions at least every two (2) hours, day and night to stimulate circulation and prevent decubiti and deformities;

c. Making every effort to keep patients active and out of bed for reasonable periods of time, except when contraindicated by physician's orders, and encouraging patients to achieve independence in activities of daily living by teaching self care, transfer and ambulation activities;

d. Assisting patients to adjust to their disabilities, to use their prosthetic devices, and to redirect their interests if necessary;

e. Assisting patients to carry out prescribed physical therapy exercises between visits of the physical therapist.

(c) Dietary supervision. Nursing personnel shall assure that patients are served diets as prescribed. Patients needing help in eating shall be assisted promptly upon receipt of meals. Food and fluid intake of patients shall be observed and deviations from normal shall be reported to the charge nurse. Persistent unresolved problems shall be reported to the physician.

(d) Nursing care plan. There shall be written nursing care plans for each patient based on the nature of illness, treatment prescribed, long and short term goals and other pertinent information.

1. The nursing care plan shall be a personalized, daily plan for individual patients. It shall indicate what nursing care is needed, how it can best be accomplished for each patient, what are the patient's preferences, what methods and approaches are most successful, and what modifications are necessary to insure best results.

2. Nursing care plans shall be available for use by all nursing personnel.

3. Nursing care plans shall be reviewed and revised as needed.

4. Relevant nursing information from the nursing care plan shall be included with other medical information when patients are transferred.

(3) Specialized rehabilitative services.

(a) 1. Rehabilitative services shall be provided upon written order of the physician; or

2. An advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), [or] therapeutically-certified optometrist in the practice of optometry as defined in KRS 320.210(2), or physician assistant as authorized in KRS 311.560(3) and (4), may write an order for rehabilitative services limited to their scope of practice; and

3. A written order shall indicate [which indicates] anticipated goals and prescribe [prescribed] specific modalities to be used and frequency of [physical, speech and occupational] therapy services.

(b) Therapy services shall include:

1. Physical therapy which includes:

a. Assisting the physician in his evaluation of patients by applying muscle, nerve, joint, and functional ability tests;

b. Treating patients to relieve pain, develop or restore functions, and maintain maximum performance, using physical means such as exercise, massage, heat, water, light, and electricity.

2. Speech therapy which include:

a. Services in speech pathology or audiology;

b. Cooperation in the evaluation of patients with speech, hearing, or language disorders;

c. Determination and recommendation of appropriate speech and hearing services.

3. Occupational therapy services which includes:

a. Assisting the physician in his evaluation of the patient's level of function by applying diagnostic and prognostic tests;

b. Guiding the patient in his use of therapeutic creative and self-care activities for improving function.

(c) Therapists shall collaborate with the facility's medical and nursing staff in developing the patient's total plan of care.

(d) Ambulation and therapeutic equipment. Commonly used ambulation and therapeutic equipment necessary for services offered shall be available for use in the facility such as parallel bars, hand rails, wheelchairs, walkers, walkerettes, crutches and canes. The therapists shall advise the administrator concerning the purchase, rental, storage and maintenance of equipment and supplies.

(4) Personal care services. Personal care services shall include: assistance with bathing, shaving, cleaning and trimming of fingernails and toenails, cleaning of the mouth and teeth, and washing, grooming and cutting of hair.

(5) Pharmaceutical services.

(a) Procedures for administration of pharmaceutical services. The facility shall provide appropriate methods and procedures for obtaining, dispensing and administering of drugs and biologicals, which have been developed with the advice of a staff pharmacist, or a consultant pharmacist, in cooperation with the facility's pharmacy and therapeutics committee.

(b) If the facility has a pharmacy department, a licensed pharmacist shall be employed to administer the pharmacy department.

(c) If the facility does not have a pharmacy department, it shall have provisions for promptly and conveniently obtaining prescribed drugs and biologicals from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky Board of Pharmacy, pursuant to KRS 315.035.

(d) If the facility does not have a pharmacy department, but does maintain a supply of drugs:

1. The consultant pharmacist shall be responsible for the control of all bulk drugs and maintain records of their receipt and disposition.

2. The consultant pharmacist shall dispense drugs from the drug supply, properly label them and make them available to appropriate licensed nursing personnel.

3. Provisions shall be made for emergency withdrawal of medications from the drug supply.

(e) An emergency medication kit approved by the facility's professional personnel shall be kept readily available. The facility shall maintain a record of what drugs are in the kit and document how the drugs are used.

(f) Medication services.

1. [Conformance with physician's orders:] All medications administered to patients shall be ordered in writing by the patient's physician, [or] advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8) and limited to their scope of practice, [or] therapeutically-certified optometrist in the practice of optometry as defined in KRS 320.210(2) and limited to their scope of practice, or physician assistant authorized in KRS 311.560(3) and (4) and limited to their scope of practice. Telephone orders shall be given only to a licensed nurse or pharmacist immediately reduced to writing, signed by the nurse and countersigned by the physician, [or] advanced registered nurse practitioner, [or] therapeutically-certified optometrist, or physician assistant within forty-eight (48) hours. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy or stop orders. The registered nurse or the pharmacist shall review each patient's medication profile at least monthly. The patient's [prescribing] physician shall review each patient's medications at the time of the medical evaluation pursuant to subsection (1)(b) of this section. The patient's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the patient's therapeutic regimen is not interrupted. Medications are to be released to patients on discharge only on the written authorization of the physician.

2. Administration of medications. All medications shall be admin-

istered by licensed medical or nursing personnel in accordance with [the Medical Practice Act (KRS 311.530 to 311.620)] and [Nurse Practice Act of (KRS Chapter 314)], or by personnel who have completed a state approved training program from a state approved training provider. The administration of oral and topical medicines by certified medicine technicians shall be under the supervision of licensed medical or nursing personnel. Intramuscular injections shall be administered by a licensed nurse or a physician. If intravenous injections are necessary they shall be administered by a licensed physician, a registered nurse or a properly trained licensed nurse. Each dose administered shall be recorded in the medical record.

a. The nursing station shall have readily available items necessary for the proper administration of medications.

b. In administering medications, medication cards or other state approved systems shall be used and checked against the physician's orders.

c. Medications prescribed for one (1) patient shall not be administered to any other patient.

d. Self-administration of medications by patients shall not be permitted except on special order of the patient's physician or in a predischarge program under the supervision of a licensed nurse.

e. Medication errors and drug reactions shall be immediately reported to the patient's physician and an entry thereof made in the patient's medical record as well as on an incident report.

f. Up-to-date medication reference texts and sources of information shall be provided for use by the nursing staff (e.g., the American Hospital Formulary Service of the American Society of Hospital Pharmacists, Physicians Desk Reference or other suitable references).

### 3. Labeling and storing medications.

a. All medications shall be plainly labeled with the patient's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use except where accepted modified unit dose systems conforming to federal and state laws are used. The medications of each patient shall be kept and stored in their original containers and transferring between containers shall be prohibited. All medicines kept by the facility shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. Medications requiring refrigeration shall be kept in a separate locked box of adequate size in the refrigerator in the medication area. Drugs for external use shall be stored separately from those administered by mouth and injection. Provisions shall also be made for the locked separate storage of medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with federal and state laws and regulations.

b. Medication containers having soiled, damaged, incomplete, illegible, or makeshift labels shall be returned to the issuing pharmacist or pharmacy for relabeling or disposal. Containers having no labels shall be destroyed in accordance with state and federal laws.

c. Cabinets shall be well lighted and of sufficient size to permit storage without crowding.

d. Medications no longer in use shall be disposed of or destroyed in accordance with federal and state laws and regulations.

e. Medications having an expiration date shall be removed from usage and properly disposed of after such date.

f. Controlled substances. Controlled substances shall be kept under double lock (e.g., in a locked box in a locked cabinet). There shall be a controlled substances record, in which is recorded the name of the patient, the date, time, kind, dosage, balance, remaining and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it, or staff who supervised the self-administration. In addition, there shall be a recorded and signed schedule II controlled substances count daily, and schedule III, IV and V controlled substances count once per week by those persons who have access to controlled substances. All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with [KRS 218A.230, or] 21 CFR 1307.21, or sent via registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources].

4. Use of restraints [or protective devices. If a patient becomes disturbed or unmanageable, the patient's physician shall be notified in order to evaluate and direct the patient's care].

a. No [form of] restraints [or protective devices] shall be used

except as permitted by KRS 216.515(6). [under written orders of the attending physician.

a. Protective devices. Protective devices may be used to protect the patient from falling from a bed or chair. The least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility. In no case shall a locking device be used.]

b. [Physical restraint.] Restraints that require lock and key shall not be used. [In an emergency, restraints may be used temporarily, but in no case for a period to exceed twelve (12) hours.]

c. Restraints shall be applied only by appropriately trained personnel [trained in the proper application and observation of this equipment. Restraints shall be checked at least every one-half (1/2) hour and released at least ten (10) minutes every two (2) hours. The checks and releases of restraints shall be recorded in the patient's medical record as they are completed. Such reports shall document the rationale or justification for the use of the procedure, a description of the specific procedures employed, and the physician's order. Restraints shall be used only as a therapeutic measure to prevent the patient from causing physical harm to self or others].

d. Restraints shall not be used as a punishment, as discipline, as a convenience for the staff, or as a mechanism to produce regression. [Restraints shall be comfortable and easily removed in case of an emergency.

e. Chemical restraints. Chemical restraints shall not be used as punishment, for the convenience of the staff, as a substitute for programs, or in quantities that interfere with the patient's habilitation.]

### 5. Infection control and communicable diseases.

a. There shall be written infection control policies, which are consistent with the Centers for Disease Control guidelines including:

(i) Policies which address the prevention of disease transmission to and from patients, visitors and employees, including:

i. Universal blood and body fluid precautions;

ii. Precautions for infections which can be transmitted by the airborne route; and

iii. Work restrictions for employees with infectious diseases.

(ii) Policies which address the cleaning, disinfection, and sterilization methods used for equipment and the environment.

b. The facility shall provide in-service education programs on the cause, effect, transmission, prevention and elimination of infections for all personnel responsible for direct patient care.

### c. Sharp wastes.

(i) Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be segregated from other wastes and placed in puncture resistant containers immediately after use.

(ii) Needles shall not be recapped by hand, purposely bent or broken, or otherwise manipulated by hand.

(iii) The containers of sharp wastes shall either be incinerated on or off site, or be rendered nonhazardous by a technology of equal or superior efficacy, which is approved by both the Cabinet for Health Services [Human Resources] and the Natural Resources and Environmental Protection Cabinet.

### d. Disposable waste.

(i) All disposable waste shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and shall be handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

(ii) The facility shall establish specific written policies regarding handling and disposal of all wastes.

(iii) The following wastes shall be disposed of by incineration, autoclaved before disposal, or carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

(iv) Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment regulations [pursuant to 40 CFR 403 and 401 KAR 5:055, Section 9].

e. Patients infected with the following diseases shall not be admitted to the facility: anthrax, campylobacteriosis, cholera, diphtheria, hepatitis A, measles, pertussis, plague, poliomyelitis, rabies (human), rubella, salmonellosis, shigellosis, typhoid fever, yersiniosis, brucellosis, giardiasis, leprosy, psittacosis, Q fever, tularemia, and typhus.

f. A facility may admit a noninfectious tuberculosis patient under continuing medical supervision for his tuberculosis disease.

g. Patients with active tuberculosis may be admitted to the facility

whose isolation facilities and procedures have been specifically approved by the cabinet.

h. If, after admission, a patient is suspected of having a communicable disease that would endanger the health and welfare of other patients the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the patient with the communicable disease and the other patients.

(6) Diagnostic services. The facility shall have provisions for obtaining required clinical laboratory, x-ray and other diagnostic services. Laboratory services may be obtained from a laboratory which is part of a licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any administrative regulations promulgated thereunder. Radiology services shall be obtained from a service licensed or registered pursuant to KRS 211.842 to 211.852 and any administrative regulations promulgated thereunder. If the facility provides its own diagnostic services, the service shall meet the applicable laws and administrative regulations. All diagnostic services shall be provided only on the request of a physician. The physician shall be notified promptly of the test results. Arrangements shall be made for the transportation of patients, if necessary, to and from the source of service. Simple tests, such as those customarily done by nursing personnel for diabetic patients may be done in the facility. All reports shall be included in the medical record.

(7) Dental services. The facility shall assist patients to obtain regular and emergency dental care. Provision for dental care: patients shall be assisted to obtain regular and emergency dental care. An advisory dentist shall provide consultation, participate in in-service education, recommend policies concerning oral hygiene, and shall be available in case of emergency. The facility, when necessary, shall arrange for the patient to be transported to the dentist's office. Nursing personnel shall assist the patient to carry out the dentist's recommendations.

(8) Social services.

(a) Provision for medically related social needs. The medically related social needs of the patient shall be identified, and services provided to meet them, in admission of the patient, during his treatment and care in the facility, and in planning for his discharge.

1. As a part of the process of evaluating a patient's need for services in a facility and whether the facility can offer appropriate care, emotional and social factors shall be considered in relation to medical and nursing requirements.

2. As soon as possible after admission, there shall be an evaluation, based on medical, nursing and social factors, of the probable duration of the patient's need for care and a plan shall be formulated and recorded for providing such care.

3. Where there are indications that financial help will be needed, arrangements shall be made promptly for referral to an appropriate agency.

4. Social and emotional factors related to the patient's illness, to his response to treatment and to his adjustment to care in the facility shall be recognized and appropriate action shall be taken when necessary to obtain casework services to assist in resolving problems in these areas.

5. Knowledge of the patient's home situation, financial resources, community resources available to assist him, and pertinent information related to his medical and nursing requirements shall be used in making decisions regarding his discharge from the facility.

(b) Confidentiality of social data. Pertinent social data, and information about personal and family problems related to the patient's illness and care shall be made available only to the attending physician, appropriate members of the nursing staff, and other key personnel who are directly involved in the patient's care, or to recognized health or welfare agencies. There shall be appropriate policies and procedures for assuring the confidentiality of such information.

1. The staff member responsible for social services shall participate in clinical staff conferences and confer with the attending physician at intervals during the patient's stay in the facility, and there shall be evidence in the record of such conferences.

2. The staff member and nurses responsible for the patient's care shall confer frequently and there shall be evidence of effective working relationships between them.

3. Records of pertinent social information and of action taken to meet social needs shall be maintained for each patient. Signed social service summaries shall be entered promptly in the patient's medical

record for the benefit of all staff involved in the care of the patient.

(9) Patient activities. Activities suited to the needs and interests of patients shall be provided as an important adjunct to the active treatment program and to encourage restoration to self-care and resumption of normal activities. Provision shall be made for purposeful activities which are suited to the needs and interests of patients.

(a) The activity leader shall use, to the fullest possible extent, community, social and recreational opportunities.

(b) Patients shall be encouraged but not forced to participate in such activities. Suitable activities are provided for patients unable to leave their rooms.

(c) Patients who are able and who wish to do so shall be assisted to attend religious services.

(d) Patients' request to see their clergymen shall be honored and space shall be provided for privacy during visits.

(e) Visiting hours shall be flexible and posted to permit and encourage visiting friends and relatives.

(f) The facility shall make available a variety of supplies and equipment adequate to satisfy the individual interests of patients. Examples of such supplies and equipment are: books and magazines, daily newspapers, games, stationery, radio and television and the like.

(10) Residential services.

(a) Dietary services. The facility shall provide or contract for food service to meet the dietary needs of the patients including modified diets or dietary restrictions as prescribed by the attending physician, for advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), or physician assistant as authorized in KRS 311.560(3) and (4). When a facility contracts for food service with an outside food management company, the company shall provide a qualified dietician on a full-time, part-time or consultant basis to the facility. The qualified dietician shall have continuing liaison with the medical and nursing staff of the facility for recommendations on dietetic policies affecting patient care. The company shall comply with all of the appropriate requirements for dietary services in this administrative regulation.

1. Therapeutic diets. If the designated person responsible for food service is not a qualified dietician or nutritionist, consultation by a qualified dietician or qualified nutritionist shall be provided.

2. Dietary staffing. There shall be sufficient food service personnel employed and their working hours, schedules of hours, on duty and days off shall be posted. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety or time required for regular dietary assignments.

3. Menu planning.

a. Menus shall be planned, written and rotated to avoid repetition. Nutrition needs shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with physician's orders.

b. Meals shall correspond with the posted menu. Menus must be planned and posted one (1) week in advance. When changes in the menu are necessary, substitutions shall provide equal nutritive value and the changes shall be recorded on the menu and all menus shall be kept on file for thirty (30) days.

c. The daily menu shall include daily diet for all modified diets served within the facility based on an approved diet manual. The diet manual shall be a current manual with copies available in the dietary department that has the approval of the professional staff of the facility. The diet manual shall indicate nutritional deficiencies of any diet. The dietician shall correlate and integrate the dietary aspects of the patient care with the patient and patient's chart through such methods as patient instruction, recording diet histories, and participation in rounds and conference.

4. Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well-balanced palatable meals. Records of food purchased for preparation shall be on file for thirty (30) days.

b. Food shall be prepared with consideration for any individual dietary requirement. Modified diets, nutrient concentrates and supplements shall be given only on the written orders of a physician, for advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), or physician assistant as authorized in KRS 311.560(3) and (4).



c. At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. Between-meal snacks to include an evening snack before bedtime shall be offered to all patients. Adjustments shall be made when medically indicated.

d. Foods shall be prepared by methods that conserve nutritive value, flavor and appearance and shall be attractively served at the proper temperatures, and in a form to meet the individual needs. A file of tested recipes, adjusted to appropriate yield shall be maintained. Food shall be cut, chopped or ground to meet individual needs. If a patient refuses foods served, nutritional substitutions shall be offered.

e. All opened containers or left over food items shall be covered and dated when refrigerated.

5. Serving of food. When a patient cannot be served in the dining room, trays shall be provided for bedfast patients and shall rest on firm supports such as overbed tables. Sturdy tray stands of proper height shall be provided for patients able to be out of bed.

a. Correct positioning of the patient to receive his tray shall be the responsibility of the direct patient care staff. Patients requiring help in eating shall be assisted within a reasonable length of time.

b. Adaptive self-help devices shall be provided to contribute to the patient's independence in eating.

6. Sanitation. All facilities shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 [(Kentucky's Food Service Establishment Act and Food Service Code)].

(b) Housekeeping and maintenance services.

1. The facility shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other obvious sources.

2. An adequate supply of clean linen shall be on hand at all times. Soiled clothing and linens shall receive immediate attention and shall not be allowed to accumulate. Clothing or bedding used by one (1) patient shall not be used by another until it has been laundered or dry cleaned.

3. Soiled linen shall be placed in washable or disposable containers, transported in a sanitary manner and stored in separate, well-ventilated areas in a manner to prevent contamination and odors. Equipment or areas used to transport or store soiled linen shall not be used for handling or storing of clean linen.

4. Soiled linen shall be sorted and laundered in the soiled linen room in the laundry area. Hand-washing facilities with hot and cold water, soap dispenser and paper towels shall be provided in the laundry area.

5. Clean linen shall be sorted, dried, ironed, folded, transported, stored and distributed in a sanitary manner.

6. Clean linen shall be stored in clean linen closets on each floor, close to the nurses' station.

7. Personal laundry of patients or staff shall be collected, transported, sorted, washed and dried in a sanitary manner, separate from bed linens.

8. Patients' personal clothing shall be laundered as often as is necessary. Laundering of patients' personal clothing shall be the responsibility of the facility unless the patient or the patient's family accepts this responsibility. Patient's personal clothing laundered by or through the facility shall be marked to identify the patient-owner and returned to the correct patient.

9. Maintenance. The premises shall be well kept and in good repair. Requirements shall include:

a. The facility shall insure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps and fences are in good repair.

b. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair. Windows and doors shall be screened.

c. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

d. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

(c) Room accommodations.

1. Each patient shall be provided a standard size bed or the

equivalent at least thirty-six (36) inches wide, equipped with substantial springs, a clean comfortable mattress, a mattress cover, two (2) sheets and a pillow, and such bed covering as is required to keep the patients comfortable. Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by patients shall be placed so that no patient may experience discomfort because of proximity to radiators, heat outlets, or by exposure to drafts.

2. The facility shall provide window coverings, bedside tables with reading lamps (if appropriate), comfortable chairs, chest or dressers with mirrors, a night light, and storage space for clothing and other possessions.

3. Patients shall not be housed in unapproved rooms or unapproved detached buildings.

4. Basement rooms shall not be used for sleeping rooms for patients.

5. Patients may have personal items and furniture when it is physically feasible.

6. There shall be a sufficient number of tables provided that can be rolled over a patient's bed or be placed next to a bed to serve patients who cannot eat in the dining room.

7. Each living room or lounge area and recreation area shall have an adequate number of reading lamps, and tables and chairs or settees of sound construction and satisfactory design.

8. Dining room furnishings shall be adequate in number, well constructed and of satisfactory design for the patients.

9. Each patient shall be permitted to have his own radio and television set in his room unless it interferes with or is disturbing to other patients.

TIMOTHY L. VENO, Inspector General

JOHN MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: March 11, 1998

FILED WITH LRC: March 12, 1998 at 3 p.m.

**CABINET FOR HEALTH SERVICES**  
Office of Inspector General  
Division of Licensing and Regulation  
(As Amended at ARRS, July 14, 1998)

**902 KAR 20:048. Operation and services; nursing homes.**

RELATES TO: KRS 216B.010 to 216B.130 [216B.131], 216B.990  
STATUTORY AUTHORITY: KRS 216B.042, 216B.105,  
311.560(3), (4), 314.011(8), 314.042(8), 320.210(2), EO 96-862 [(3)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105[(3)] mandate that the Cabinet for Health Services [Human Resources] regulate health facilities and health services. This administrative regulation establishes licensure requirements for existing nursing homes. This administrative regulation does not address the establishment of new nursing homes. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.

Section 1. Definitions. (1) "Activities of daily living" means activities of self-help (e.g., being able to feed, bathe and/or dress oneself), communication (e.g., being able to place phone calls, write letters and understanding instructions) and socialization (e.g., being able to shop, being considerate of others, working with others and participating in activities).

(2) "Administrator" means a person who is licensed as a nursing home administrator pursuant to KRS 216A.080.

(3) ["Board"] means the Commission on Health Economics Control in Kentucky.

(4) "Facility" means a nursing home facility.

(4) [(5)] "License" means an authorization issued by the cabinet for the purpose of operating a nursing home and offering nursing home services.

(5) [(6)] "PRN medications" means medications administered as needed.

(6) [(7)] "Qualified dietician" or "nutritionist" means:



(a) A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or

(b) A person who has a masters degree in nutrition and is a member of ADA or is eligible for registration by ADA; or

(c) A person who has a bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.

~~[(8) "Protective devices" means devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt;]~~

[Z] [(9)] "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

Section 2. Scope of Operations and Services. Nursing homes are establishments with permanent facilities that include inpatient beds. Services provided include medical services, and continuous nursing services. Patients in a nursing home facility require inpatient care but do not currently require inpatient hospital services, and have a variety of medical conditions.

Section 3. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for the facility and for compliance with federal, state and local laws and regulations pertaining to the operation of the facility.

(2) Administrator.

(a) All facilities shall have an administrator who is responsible for the operation of the facility and who shall delegate such responsibility in his absence.

(b) The licensee shall contract for professional and supportive services not available in the facility as dictated by the needs of the patient. The contract shall be in writing.

(3) Administrative records.

(a) The facility shall maintain a bound, permanent, chronological patient registry showing date of admission, name of patient, and date of discharge.

(b) The facility shall require and maintain written recommendations or comments from consultants regarding the program and its development on a per visit basis.

(c) Menu and food purchase records shall be maintained.

(d) A written report of any incident or accident involving a patient (including medication errors or drug reactions), visitor or staff shall be made and signed by the administrator or nursing service supervisor, and any staff member who witnessed the incident. The report shall be filed in an incident file.

(4) Policies. The facility shall establish written policies and procedures that govern all services provided by the facility. The written policies shall include:

(a) Patient care and services to include physician, nursing, pharmaceutical (including medication stop orders policy), and residential services.

(b) Adult and child protection. The facility shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children ~~[to the Cabinet for Human Resources]~~ pursuant to KRS Chapters 209 and 620.

(c) Use of restraints. The facility shall have a written policy that addresses the use of restraints and a mechanism for monitoring and controlling their use.

(d) Missing patient procedures. The facility shall have a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a patient is determined to be lost, unaccounted for or on other unauthorized absence.

(5) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(6) Admission.

(a) Patients shall be admitted only upon the referral of a physician. Additionally, the facility shall admit only persons who have a variety of medical conditions and require medical services, continuous medical services, and inpatient care but do not currently require inpatient hospital services. The facility shall not admit persons whose care needs

exceed the capability of the facility.

(b) Upon admission the facility shall obtain the patient's medical diagnosis, physician's orders for the care of the patient and the transfer form. Within forty-eight (48) hours after admission the facility shall obtain a medical evaluation from the patient's physician including current medical findings, medical history and physical examination. The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital or nursing facility, if done within five (5) days prior to admission.

(c) Before admission the patient and a responsible member of his family or committee shall be informed in writing of the established policies of the facility including fees, reimbursement, visitation rights during serious illness, visiting hours, type of diets offered and services rendered.

(d) The facility shall provide and maintain a system for identifying each patient's personal property and facilities for safekeeping of his declared valuables. Each patient's clothing and other property shall be reserved for his own use.

(7) Discharge planning. The facility shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(8) Transfer and discharge. The facility shall comply with the requirements of 900 KAR 2:050 when transferring or discharging residents. (Transfer procedures and agreements.)

(a) The facility shall have written transfer procedures and agreements for the transfer of patients to other health care facilities which can provide a level of inpatient care not provided by the facility. Any facility which does not have a transfer agreement in effect but which documents a good faith attempt to enter into such an agreement shall be considered to be in compliance with the licensure requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients and establish responsibility for notifying the other institution promptly of the impending transfer of a patient and arrange for appropriate and safe transportation.

(b) When the patient's condition exceeds the scope of services of the facility, the patient, upon physician's orders (except in cases of emergency), shall be transferred promptly to a hospital or a skilled nursing facility, or services shall be contracted for from another community resource.

(c) When changes and progress occur which would enable the patient to function in a less structured and restrictive environment, and the less restrictive environment cannot be offered at the facility, the facility shall offer assistance in making arrangements for patients to be transferred to facilities providing appropriate services.

(d) Except in an emergency, the patient, his next of kin, or guardian, if any, and the attending physician shall be consulted in advance of the transfer or discharge of any patient.

(e) When a transfer is to another level of care within the same facility, the complete medical record or a current summary thereof shall be transferred with the patient.

(f) If the patient is transferred to another health care facility or home to be cared for by a home health agency, a transfer form shall accompany the patient. The transfer form shall include at least: physician's orders (if available), current information relative to diagnosis with history of problems requiring special care, a summary of the course of prior treatment, special supplies or equipment needed for patient care, and pertinent social information on the patient and his family.

(9) Tuberculosis testing. All employees and patients shall be tested for tuberculosis in accordance with the provisions of 902 KAR 20:200, Tuberculosis testing in long term care facilities.

(10) Personnel.

(a) Job descriptions. Written job descriptions shall be developed for each category of personnel, to include qualifications, lines of authority and specific duty assignments.

(b) Employee records. Current employee records shall be maintained and shall include a resume of each employee's training and experience, evidence of current licensure or registration where required by law, health records, records of in-service training and ongoing education, and the employee's name, address and social security number.

(c) Staffing requirements.

1. The facility shall have adequate personnel to meet the needs of

the patients on a twenty-four (24) hour basis. The number and classification of personnel required shall be based on the number of patients and the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by this administrative regulation.

2. When the staff to [r] patient ratio does not meet the needs of the patients, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification and shall give the basis for this determination.

3. A responsible staff member shall be on duty and awake at all times to ensure prompt, appropriate action in cases of injury, illness, fire or other emergencies.

4. Volunteers shall not be counted to make up minimum staffing requirements.

5. The facility shall have a director of nursing service who is a registered nurse and who works full time during the day, and who devotes full time to the nursing service of the facility. If the director of nursing has administrative responsibility for the facility, there shall be an assistant director of nursing, so that there shall be the equivalent of a full-time director of nursing service. The director of nursing shall be trained or experienced in areas of nursing service, administration, rehabilitation nursing, psychiatric or geriatric nursing. The director of the nursing service shall be responsible for:

a. Developing and maintaining nursing service objectives, standards of nursing practice, nursing procedure manuals, and written job descriptions for each level of nursing personnel.

b. Recommending to the administrator the number and levels of nursing personnel to be employed, participating in their recruitment and selection and recommending termination of employment when necessary.

c. Assigning and supervising all levels of nursing personnel.

d. Participating in planning and budgeting for nursing care.

e. Participating in the development and implementation of patient care policies.

f. Coordinating nursing services with other patient care services.

g. Planning and conducting orientation programs for new nursing personnel and continuing in-service education for all nursing personnel.

h. Participating in the screening of prospective patients in terms of required nursing services and nursing skills available.

i. Assuring that a written monthly assessment of the patient's general condition is completed.

j. Assuring that a nursing care plan shall be established for each patient and that his plan shall be reviewed and modified as necessary.

k. Assuring that registered nurses, licensed practical nurses, nurses' aides and orderlies are assigned duties consistent with their training and experience.

l. Assuring that a monthly review of each patient's medications is completed and notifying the physician when changes are appropriate.

6. Supervising nurse. Nursing care shall be provided by or under the direction of a full-time registered nurse. The supervising nurse may be the director of nursing or the assistant director of nursing and shall be trained or experienced in the areas of nursing administration and supervision, rehabilitative nursing, psychiatric or geriatric nursing. The supervising nurse shall make daily rounds to all nursing units performing such functions as visiting each patient, and reviewing medical records, medication cards, patient care plans, and staff assignments, and whenever possible accompanying physicians when visiting patients.

7. Charge nurse. There shall be at least one (1) registered nurse or licensed practical nurse on duty at all times who is responsible for the nursing care of patients during her tour of duty. When a licensed practical nurse is on duty, a registered nurse shall be on call.

8. Pharmacist. The facility shall retain a licensed pharmacist on a full-time, part-time or consultant basis to direct pharmaceutical services.

9. Therapists.

a. If rehabilitative services beyond rehabilitative nursing care are offered, whether directly or through cooperative arrangements with agencies that offer therapeutic services, these services shall be provided or supervised by qualified therapists to include licensed physical therapists, speech pathologists and occupational therapists.

b. When supervision is less than full time, it shall be provided on a planned basis and shall be frequent enough, in relation to the staff therapist's training and experience, to assure sufficient review of individual treatment plans and progress.

c. In a facility with an organized rehabilitation service using a multidisciplinary team approach to meet all the needs of the patient, and where all therapists' services are administered under the direct supervision of a physician qualified in physical medicine who will determine the goals and limits of the therapists' work, and prescribes modalities and frequency of therapy, persons with qualifications other than those described in subsection (9)(c)9a of this section may be assigned duties appropriate to their training and experience.

10. Dietary. Each facility shall have a full-time person designated by the administrator, responsible for the total food service operation of the facility and on duty a minimum of thirty-five (35) hours each week.

11. Each facility shall designate a person for the following areas who will be responsible for:

a. Medical records;

b. Arranging for social services; and

c. Developing and implementing the activities program and therapeutic recreation.

12. Supportive personnel, consultants, assistants and volunteers shall be supervised and shall function within the policies and procedures of the facility.

(d) Health requirements. No employee contracting an infectious disease shall appear at work until the infectious disease can no longer be transmitted.

(e) Orientation program. The facility shall conduct an orientation program for all new employees to include review of all facility policies (that relate to the duties of their respective jobs), services and emergency and disaster procedures.

(f) In-service training.

1. All employees shall receive in-service training and ongoing education to correspond with the duties of their respective jobs.

2. All nursing personnel shall receive in-service or continuing education programs at least quarterly.

(11) Medical records.

(a) The facility shall develop and maintain a system of records retention and filing to insure completeness and prompt location of each patient's record. The records shall be held confidential. The records shall be in ink or typed and shall be legible. Each entry shall be dated and signed. Each record shall include:

1. Identification data including the patient's name, address and social security number (if available); name, address and telephone number of referral agency; name and telephone number of personal physician; name, address and telephone number of next of kin or other responsible person; and date of admission.

2. Admitting medical evaluation by a physician including current medical findings, medical history, physical examination and diagnosis. (The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital, skilled nursing facility if done within five (5) days prior to admission.)

3. ~~The physician's~~ Dated and signed orders for medication, diet, and therapeutic services.

4. Physician's progress notes describing significant changes in the patient's condition, written at the time of each visit.

5. Findings and recommendations of consultants.

6. A medication sheet which contains the date, time given, name of each medication dosage, name of prescribing physician, for advanced registered nurse practitioner, for therapeutically-certified optometrist, or physician assistant, and name of person who administered the medication.

7. Nurse's notes indicating changes in patient's condition, actions, responses, attitudes, appetite, etc. Nursing personnel shall make notation of response to medications, response to treatments, mode and frequency of PRN medications administered, condition necessitating administration of PRN medication, reaction following PRN medication, visits by physician and phone calls to the physician, medically prescribed diets and preventive maintenance or rehabilitative nursing measures.

8. Written assessment of the patient's monthly general condition.

9. Reports of dental, laboratory and x-ray services (if applicable).

10. Changes in patient's response to the activity and therapeutic recreation program.

11. A discharge summary, signed and dated by the attending physician within one (1) month of discharge from the facility.

(b) Retention of records. After patient's death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

Section 4. Provision of Services. (1) Physician services.

(a) The health care of every patient shall be under the supervision of a physician who, based on an evaluation of the patient's immediate and long-term needs, prescribes a planned regimen of medical care which covers indicated medications, treatments, rehabilitative services, diet, special procedures recommended for the health and safety of the patient, activities, plans for continuing care and discharge.

(b) Patients shall be evaluated by a physician at least once every thirty (30) days for the first sixty (60) days following admission. Subsequent to the 60th day following admission, the patients shall be evaluated by a physician every sixty (60) days unless justified and documented by the attending physician in the patient's medical record. There shall be evidence in the patient's medical record of the physician visits to the patient at appropriate intervals.

(c) There shall be evidence in the patient's medical record that the patient's attending physician has made arrangement for the medical care of the patient in the physician's absence.

(d) Availability of physicians for emergency care. The facility shall have arrangements with one (1) or more physicians who will be available to furnish necessary medical care in case of an emergency if the physician responsible for the care of the patient is not immediately available. A schedule listing the names and telephone numbers of these physicians and the specific days each shall be on call shall be posted in each nursing station. There shall be established procedures to be followed in an emergency, which cover immediate care of the patient, persons to be notified, and reports to be prepared.

(2) Nursing services.

(a) Twenty-four (24) hour nursing service. There shall be twenty-four (24) hour nursing service with a sufficient number of nursing personnel on duty at all times to meet the total needs of patients. Nursing personnel shall include registered nurses, licensed practical nurses, aides and orderlies. The amount of nursing time available for patient care shall be exclusive of nonnursing duties. Sufficient nursing time shall be available to assure that each patient:

1. Shall receive treatments, medication, and diets as prescribed;
2. Shall receive proper care to prevent decubiti and shall be kept comfortable, clean and well-groomed;
3. Shall be protected from accident and injury by the adoption of indicated safety measures;
4. Shall be treated with kindness and respect.

(b) Rehabilitative nursing care. There shall be an active program of rehabilitative nursing care directed toward assisting each patient to achieve and maintain his highest level of self-care and independence.

1. Rehabilitative nursing care initiated in the hospital shall be continued immediately upon admission to the facility.

2. Nursing personnel shall be taught rehabilitative nursing measures and shall practice them in their daily care of patients. These measures shall include:

- a. Maintaining good body alignment and proper positioning of bedfast patients;
- b. Encouraging and assisting bedfast patients to change positions at least every two (2) hours, day and night to stimulate circulation and prevent decubiti and deformities;
- c. Making every effort to keep patients active and out of bed for reasonable periods of time, except when contraindicated by physician's orders, and encouraging patients to achieve independence in activities of daily living by teaching self care, transfer and ambulation activities;

d. Assisting patients to adjust to their disabilities, to use their prosthetic devices, and to redirect their interests if necessary;

e. Assisting patients to carry out prescribed physical therapy exercises between visits of the physical therapist.

(c) Dietary supervision. Nursing personnel shall assure that patients are served diets as prescribed. Patients needing help in eating shall be assisted promptly upon receipt of meals. Food and fluid intake of patients shall be observed and deviations from normal shall be

reported to the charge nurse. Persistent unresolved problems shall be reported to the physician.

(d) Nursing care plan. There shall be written nursing care plans for each patient based on the nature of illness, treatment prescribed, long and short term goals and other pertinent information.

1. The nursing care plan shall be a personalized, daily plan for individual patients. It shall indicate what nursing care is needed, how it can best be accomplished for each patient, what are the patients preferences, what methods and approaches are most successful, and what modifications are necessary to insure best results.

2. Nursing care plans shall be available for use by all nursing personnel.

3. Nursing care plans shall be reviewed and revised as needed.

4. Relevant nursing information from the nursing care plan shall be included with other medical information when patients are transferred.

(3) Specialized rehabilitative services.

(a) Rehabilitative services shall be provided upon written order of the physician which indicates anticipated goals and prescribes specific modalities to be used and frequency of physical, speech and occupational therapy services.

(b) Therapy services shall include:

1. Physical therapy which includes:

a. Assisting the physician in his evaluation of patients by applying muscle, nerve, joint, and functional ability tests;

b. Treating patients to relieve pain, develop or restore functions, and maintain maximum performance, using physical means such as exercise, massage, heat, water, light, and electricity.

2. Speech therapy which includes:

a. Service in speech pathology or audiology;

b. Cooperation in the evaluation of patients with speech, hearing, or language disorders;

c. Determination and recommendation of appropriate speech and hearing services.

3. Occupational therapy services which include:

a. Assisting the physician in his evaluation of the patient's level of function by applying diagnostic and prognostic tests;

b. Guiding the patient in his use of therapeutic creative and self care activities for improving function.

(c) Therapists shall collaborate with the facility's medical and nursing staff in developing the patient's total plan of care.

(d) Ambulation and therapeutic equipment. Commonly used ambulation and therapeutic equipment necessary for services offered shall be available for use in the facility such as parallel bars, hand rails, wheelchairs, walkers, walkerettes, crutches and canes. The therapists shall advise the administrator concerning the purchase, rental, storage and maintenance of equipment and supplies.

(4) Personal care services. Personal care services shall include: assistance with bathing, shaving, cleaning and trimming of fingernails and toenails, cleaning of the mouth and teeth, and washing, grooming and cutting of hair.

(5) Pharmaceutical services.

(a) The facility shall provide appropriate methods and procedures for obtaining, dispensing, and administering drugs and biologicals, developed with the advice of a licensed pharmacist or a pharmaceutical advisory committee which includes one (1) or more licensed pharmacists.

(b) If the facility has a pharmacy department, a licensed pharmacist shall be employed to administer the department.

(c) If the facility does not have a pharmacy department, it shall have provision for promptly obtaining prescribed drugs and biologicals from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky Board of Pharmacy, pursuant to KRS 315.035.

(d) If the facility does not have a pharmacy department, but does maintain a supply of drugs:

1. The consultant pharmacist shall be responsible for the control of all bulk drugs and maintain records of their receipt and disposition.

2. The consultant pharmacist shall dispense drugs from the drug supply, properly label them and make them available to appropriate licensed nursing personnel.

3. Provisions shall be made for emergency withdrawal of medications from the drug supply.

(e) An emergency medication kit approved by the facility's profes-

sional personnel shall be kept readily available. The facility shall maintain a record of what drugs are in the kit and document how the drugs are used.

(f) Medication services.

1. ~~[Conformance with physician's orders:]~~ All medications administered to patients shall be ordered in writing by the prescribing [patient's] physician, [or] advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), [or] therapeutically-certified optometrist in the practice of optometry as defined in KRS 320.210(2), or physician assistant as authorized in KRS 311.560(3) and (4). Telephone orders shall be given only to a licensed nurse or pharmacist immediately reduced to writing, signed by the nurse and countersigned by the physician, advanced registered nurse practitioner, [or] therapeutically-certified optometrist, or physician assistant within forty-eight (48) hours. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy on stop orders. A registered nurse or pharmacist shall review each patient's medication profile at least monthly. The prescribing physician shall review the patient's medical profile at least every two (2) months. The patient's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the patient's therapeutic regimen is not interrupted. Medications are to be released to patients on discharge only on the written authorization of the physician.

2. Administration of medications. All medications shall be administered by licensed medical or nursing personnel in accordance with ~~[the Medical Practice Act (KRS 311.530 to 311.620)]~~ and ~~[Nurse Practice Act (KRS) Chapter 314]]~~ or by personnel who have completed a state approved training program from a state approved training provider. The administration of oral and topical medicines by certified medicine technicians shall be under the supervision of licensed medical or nursing personnel. Intramuscular injections shall be administered by a licensed nurse or a physician. If intravenous injections are necessary they shall be administered by a licensed physician or registered nurse. Each dose administered shall be recorded in the medical record.

a. The nursing station shall have readily available items necessary for the proper administration of medications.

b. In administering medications, medication cards or other state approved systems shall be used and checked against the physician's orders.

c. Medications prescribed for one (1) patient shall not be administered to any other patient.

d. Self-administration of medications by patients shall not be permitted except on special order of the patient's physician or in a predischarge program under the supervision of a licensed nurse.

e. Medication errors and drug reactions shall be immediately reported to the patient's physician and an entry thereof made in the patient's medical record as well as on an incident report.

f. Up-to-date medication reference texts and sources of information shall be provided for use by the nursing staff (e.g., the American Hospital Formulary Service of the American Society of Hospital Pharmacists, Physicians Desk Reference or other suitable references).

3. Labeling and storing medications.

a. All medications shall be plainly labeled with the patient's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use except where accepted modified unit dose systems conforming to federal and state laws are used. The medications of each patient shall be kept and stored in their original containers and transferring between containers shall be prohibited. All medicines kept by the facility shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. Medications requiring refrigeration shall be kept in a separate locked box of adequate size in the refrigerator in the medication area. Drugs for external use shall be stored separately from those administered by mouth and injection. Provisions shall also be made for the locked separate storage of medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with federal and state laws and regulations.

b. Medication containers having soiled, damaged, incomplete, illegible, or makeshift labels shall be returned to the issuing pharmacist or pharmacy for relabeling or disposal. Containers having no labels

shall be destroyed in accordance with state and federal laws.

c. Cabinets shall be well lighted and sufficient size to permit storage without crowding.

d. Medications no longer in use shall be disposed of or destroyed in accordance with federal and state laws and regulations.

e. Medications having an expiration date shall be removed from usage and properly disposed of after such date.

4. Controlled substances. Controlled substances shall be kept under double lock (e.g., in a locked box in a locked cabinet). There shall be a controlled substances record, in which is recorded the name of the patient, the date, time, kind, dosage, balance remaining and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it, or staff who supervised the self-administration. In addition, there shall be a recorded and signed schedule II controlled substances count daily, and schedule III, IV and V controlled substances count once per week by those persons who have access to controlled substances. All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with ~~[KRS-218A-230, or] 21 CFR 1307.21[, or sent via registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources].~~

5. Use of restraints ~~[or protective devices. If a patient becomes disturbed or unmanageable, the patient's physician shall be notified in order to evaluate and direct the patient's care].~~

a. ~~No [form of] restraints [or protective devices] shall be used except as permitted by KRS 216.515(6), [under written orders of the attending physician:]~~

a. ~~Protective devices. Protective devices may be used to protect the patient from falling from a bed or chair. The least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility. In no case shall a locking device be used.]~~

b. ~~[Physical restraint:] Restraints that require lock and key shall not be used. [In an emergency, restraints may be used temporarily, but in no case for a period to exceed twelve (12) hours.]~~

c. ~~Restraints shall be applied only by appropriately trained personnel [trained in the proper application and observation of this equipment. Restraints shall be checked at least every one-half (1/2) hour and released at least ten (10) minutes every two (2) hours. The checks and releases of restraints shall be recorded in the patient's medical record as they are completed. Such records shall document the rationale or justification for the use of the procedure, a description of the specific procedures employed, and the physician's order. Restraints shall be used only as a therapeutic measure to prevent the patient from causing physical harm to self or others].~~

d. ~~Restraints shall not be used as a punishment, as discipline, as a convenience for the staff, or as a mechanism to produce regression. [Restraints shall be comfortable and easily removed in case of an emergency:]~~

e. ~~Chemical restraints. Chemical restraints shall not be used as punishment, for the convenience of the staff, as a substitute for programs, or in quantities that interfere with the patient's habilitation.]~~

6. Infection control and communicable diseases.

a. There shall be written infection control policies, which are consistent with the Centers for Disease Control guidelines including:

(i) Policies which address the prevention of disease transmission to and from patients, visitors and employees, including:

i. Universal blood and body fluid precautions;

ii. Precautions for infections which can be transmitted by the airborne route; and

iii. Work restrictions for employees with infectious diseases.

(ii) Policies which address the cleaning, disinfection, and sterilization methods used for equipment and the environment.

b. The facility shall provide in-service education programs on the cause, effect, transmission, prevention and elimination of infections for all personnel responsible for direct patient care.

c. Sharp wastes.

(i) Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be segregated from other wastes and placed in puncture resistant containers immediately after use.

(ii) Needles shall not be recapped by hand, purposely bent or broken, or otherwise manipulated by hand.

(iii) The containers of sharp wastes shall either be incinerated on

or off site, or be rendered nonhazardous by a technology of equal or superior efficacy, which is approved by both the Cabinet for Health Services [Human Resources] and the Natural Resources and Environmental Protection Cabinet.

d. Disposable waste.

(i) All disposable waste shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and shall be handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

(ii) The facility shall establish specific written policies regarding handling and disposal of all wastes.

(iii) The following wastes shall be disposed of by incineration, autoclaved before disposal, or carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

(iv) Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment regulations [pursuant to 40 CFR 403 and 404 KAR 5:055, Section 9].

e. Patients infected with the following diseases shall not be admitted to the facility: anthrax, campylobacteriosis, cholera, diphtheria, hepatitis A, measles, pertussis, plague, poliomyelitis, rabies (human), rubella, salmonellosis, shigellosis, typhoid fever, yersiniosis, brucellosis, giardiasis, leprosy, psittacosis, Q fever, tularemia, and typhus.

f. A facility may admit a (noninfectious) tuberculosis patient under continuing medical supervision for his tuberculosis disease.

g. Patients with active tuberculosis may be admitted to the facility whose isolation facilities and procedures have been specifically approved by the cabinet.

h. If, after admission, a patient is suspected of having a communicable disease that would endanger the health and welfare of other patients, the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the patient with the communicable disease and the other patients.

(6) Diagnostic services. The facility shall have provisions for obtaining required clinical laboratory, x-ray and other diagnostic services. Laboratory services may be obtained from a laboratory which is part of a licensed hospital or a laboratory licensed pursuant to KRS 333.030 and any administrative regulations promulgated thereunder. Radiology services shall be obtained from a service licensed or registered pursuant to KRS 211.842 to 211.852 and any administrative regulations promulgated thereunder. If the facility provides its own diagnostic services, the service shall meet the applicable laws and administrative regulations. All diagnostic services shall be provided only on the written order [request] of a physician, [or] advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), [or] therapeutically-certified optometrist in the practice of optometry as defined in KRS 320.210(2), or physician assistant as authorized in KRS 311.560(3) and (4). The physician, [or] advanced registered nurse practitioner, [or] therapeutically-certified optometrist, or physician assistant shall be notified promptly of the test results. Arrangements shall be made for the transportation of patients, if necessary, to and from the source of service. Simple tests, such as those customarily done by nursing personnel for diabetic patients may be done in the facility. All reports shall be included in the medical record.

(7) Dental services. The facility shall assist patients to obtain regular and emergency dental care. Provision for dental care: patients shall be assisted to obtain regular and emergency dental care. An advisory dentist shall provide consultation, participate in in-service education, recommend policies concerning oral hygiene, and shall be available in case of emergency. The facility, when necessary, shall arrange for the patient to be transported to the dentist's office. Nursing personnel shall assist the patient to carry out the dentist's recommendations.

(8) Social services.

(a) Provision for medically related social needs. The medically related social needs of the patient shall be identified, and services provided to meet them, in admission of the patient, during his treatment and care in the facility, and in planning for his discharge.

1. As a part of the process of evaluating a patient's need for services in a facility and whether the facility can offer appropriate care, emotional and social factors shall be considered in relation to medical and nursing requirements.

2. As soon as possible after admission, there shall be an evaluation, based on medical, nursing and social factors, of the probable

duration of the patient's need for care and a plan shall be formulated and recorded for providing such care.

3. Where there are indications that financial help will be needed, arrangements shall be made promptly for referral to an appropriate agency.

4. Social and emotional factors related to the patient's illness, to his response to treatment and to his adjustment to care in the facility shall be recognized and appropriate action shall be taken when necessary to obtain casework services to assist in resolving problems in these areas.

5. Knowledge of the patient's home situation, financial resources, community resources available to assist him, and pertinent information related to his medical and nursing requirements shall be used in making decisions regarding his discharge from the facility.

(b) Confidentiality of social data. Pertinent social data, and information about personal and family problems related to the patient's illness and care shall be made available only to the attending physician, appropriate members of the nursing staff, and other key personnel who are directly involved in the patient's care, or to recognized health or welfare agencies. There shall be appropriate policies and procedures for assuring the confidentiality of such information.

1. The staff member responsible for social services shall participate in clinical staff conferences and confer with the attending physician at intervals during the patient's stay in the facility, and there shall be evidence in the record of such conferences.

2. The staff member and nurses responsible for the patient's care shall confer frequently and there shall be evidence of effective working relationships between them.

3. Records of pertinent social information and of action taken to meet social needs shall be maintained for each patient. Signed social service summaries shall be entered promptly in the patient's medical record for the benefit of all staff involved in the care of the patient.

(9) Patient activities. Activities suited to the needs and interests of patients shall be provided as an important adjunct to the active treatment program and to encourage restoration to self-care and resumption of normal activities. Provision shall be made for purposeful activities which are suited to the needs and interests of patients.

(a) The activity leader shall use, to the fullest possible extent, community, social and recreational opportunities.

(b) Patients shall be encouraged but not forced to participate in such activities. Suitable activities are provided for patients unable to leave their rooms.

(c) Patients who are able and who wish to do so shall be assisted to attend religious services.

(d) Patients' request to see their clergymen shall be honored and space shall be provided for privacy during visits.

(e) Visiting hours shall be flexible and posted to permit and encourage visiting friends and relatives.

(f) The facility shall make available a variety of supplies and equipment adequate to satisfy the individual interests of patients. Examples of such supplies and equipment are: books and magazines, daily newspapers, games, stationery, radio and television and the like.

(10) Transportation.

(a) If transportation of patients is provided by the facility to community agencies or other activities, the following shall apply:

1. Special provision shall be made for patients who use wheelchairs.

2. An escort or assistant to the driver shall be provided in transporting patients to and from the facility if necessary for the patient's safety.

(b) The facility shall arrange for appropriate transportation in case of medical emergencies.

(11) Residential services.

(a) Dietary services. The facility shall provide or contract for food service to meet the dietary needs of the patients including modified diets or dietary restrictions as prescribed by the attending physician. When a facility contracts for food service with an outside food management company, the company shall provide a qualified dietician on a full-time, part-time or consultant basis to the facility. The qualified dietician shall have continuing liaison with the medical and nursing staff of the facility for recommendations on dietetic policies affecting patient care. The company shall comply with all of the appropriate requirements for dietary services in this administrative regulation.

1. Therapeutic diets. If the designated person responsible for food



service is not a qualified dietician or nutritionist, consultation by a qualified dietician or qualified nutritionist shall be provided.

2. Dietary staffing. There shall be sufficient food service personnel employed and their working hours, schedules of hours, on duty and days off shall be posted. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety or time required for regular dietary assignments.

3. Menu planning.

a. Menus shall be planned, written and rotated to avoid repetition. Nutrition needs shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with physician's orders.

b. Meals shall correspond with the posted menu. Menus must be planned and posted one (1) week in advance. When changes in the menu are necessary, substitutions shall provide equal nutritive value and the changes shall be recorded on the menu and all menus shall be kept on file for thirty (30) days.

c. The daily menu shall include daily diet for all modified diets served within the facility based on an approved diet manual. The diet manual shall be a current manual with copies available in the dietary department, that has the approval of the professional staff of the facility. The diet manual shall indicate nutritional deficiencies of any diet. The dietician shall correlate and integrate the dietary aspects of the patient care with the patient and patient's chart through such methods as patient instruction, recording diet histories and participation in rounds and conference.

4. Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well balanced palatable meals. Records of food purchased for preparation shall be on file for thirty (30) days.

b. Food shall be prepared with consideration for any individual dietary requirement. Modified diets, nutrient concentrates and supplements shall be given only on the written orders of a physician, or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), or physician assistant as authorized in KRS 311.560(3) and (4).

c. At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. Between-meal snacks to include an evening snack before bedtime shall be offered to all patients. Adjustments shall be made when medically indicated.

d. Foods shall be prepared by methods that conserve nutritive value, flavor and appearance and shall be attractively served at the proper temperatures, and in a form to meet the individual needs. A file of tested recipes, adjusted to appropriate yield shall be maintained. Food shall be cut, chopped or ground to meet individual needs. If a patient refuses foods served, nutritional substitutions shall be offered.

e. All opened containers or left over food items shall be covered and dated when refrigerated.

5. Serving of food. When a patient cannot be served in the dining room, trays shall be provided for bedfast patients and shall rest on firm supports such as overbed tables. Sturdy tray stands of proper height shall be provided for patients able to be out of bed.

a. Correct positioning of the patient to receive his tray shall be the responsibility of the direct patient care staff. Patients requiring help in eating shall be assisted within a reasonable length of time.

b. Adaptive self-help devices shall be provided to contribute to the patient's independence in eating.

6. Sanitation. All facilities shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 [(Kentucky's Food Service Establishment Act and Food Service Code)].

(b) Housekeeping and maintenance services.

1. The facility shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other obvious sources.

2. An adequate supply of clean linen shall be on hand at all times. Soiled clothing and linens shall receive immediate attention and shall not be allowed to accumulate. Clothing or bedding used by one (1) patient shall not be used by another until it has been laundered or dry cleaned.

3. Soiled linen shall be placed in washable or disposable contain-

ers, transported in a sanitary manner and stored in separate, well-ventilated areas in a manner to prevent contamination and odors. Equipment or areas used to transport or store soiled linen shall not be used for handling or storing of clean linen.

4. Soiled linen shall be sorted and laundered in the soiled linen room in the laundry area. Hand-washing facilities with hot and cold water, soap dispenser and paper towels shall be provided in the laundry area.

5. Clean linen shall be sorted, dried, ironed, folded, transported, stored and distributed in a sanitary manner.

6. Clean linen shall be stored in clean linen closets on each floor, close to the nurses' station.

7. Personal laundry of patients or staff shall be collected, transported, sorted, washed and dried in a sanitary manner, separate from bed linens.

8. Patients' personal clothing shall be laundered as often as is necessary. Laundering of patients' personal clothing shall be the responsibility of the facility unless the patient or the patient's family accepts this responsibility. Patient's personal clothing laundered by or through the facility shall be marked to identify the patient-owner and returned to the correct patient.

9. Maintenance. The premises shall be well kept and in good repair. Requirements shall include:

a. The facility shall insure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps and fences are in good repair.

b. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair. Windows and doors shall be screened.

c. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

d. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

(c) Room accommodations.

1. Each patient shall be provided a standard size bed or the equivalent at least thirty-six (36) inches wide, equipped with substantial springs, a clean comfortable mattress, a mattress cover, two (2) sheets and a pillow, and such bed covering as is required to keep the patients comfortable. Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by patients shall be placed so that no patient may experience discomfort because of proximity to radiators, heat outlets, or by exposure to drafts.

2. The facility shall provide window coverings, bedside tables with reading lamps (if appropriate), comfortable chairs, chest or dressers with mirrors, a night light, and storage space for clothing and other possessions.

3. Patients shall not be housed in unapproved rooms or unapproved detached buildings.

4. Basement rooms shall not be used for sleeping rooms for patients.

5. Patients may have personal items and furniture when it is physically feasible.

6. There shall be a sufficient number of tables provided that can be rolled over a patient's bed or be placed next to a bed to serve patients who cannot eat in the dining room.

7. Each living room or lounge area and recreation area shall have an adequate number of reading lamps, and tables and chairs or settees of sound construction and satisfactory design.

8. Dining room furnishings shall be adequate in number, well constructed and of satisfactory design for the patients.

9. Each patient shall be permitted to have his own radio and television set in his room unless it interferes with or is disturbing to other patients.

TIMOTHY L. VENO, Inspector General

JOHN MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: March 11, 1998

FILED WITH LRC: March 12, 1998 at 3 p.m.



## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

### CABINET FOR HEALTH SERVICES Office of Inspector General Division of Licensing and Regulation (As Amended at ARRS, July 14, 1998)

#### 902 KAR 20:051. Operation and services; intermediate care.

RELATES TO: KRS 216B.010 to 216B.130 [~~216B.131~~], 216B.990  
STATUTORY AUTHORITY: KRS 216B.042, 216B.105,  
311.560(3), (4), 314.011(8), 314.042(8), 320.210(2), EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042 and 216B.105 mandate that the Cabinet for Health Services [Human Resources] regulate health facilities and health services. This administrative regulation establishes licensure requirements for the operation of and services provided by intermediate care facilities. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.

Section 1. Definitions. (1) "Activities of daily living" means activities of self-help (e.g., being able to feed, bathe and/or dress oneself), communication (e.g., being able to place phone calls, write letters and understanding instructions) and socialization (e.g., being able to shop, being considerate of others, working with others and participating in activities).

(2) "Administrator" means a person who is licensed as a nursing home administrator pursuant to KRS 216A.080.

(3) [~~"Board"~~] means the Commission on Health Economics Control in Kentucky.

(4) [~~(5)~~] "Facility" means an intermediate care facility.

(4) [(5)] "License" means an authorization issued by the cabinet for the purpose of operating an intermediate care facility and offering intermediate care services.

(5) [(6)] "PRN medications" means medications administered as needed.

[(7)] "~~Protective devices~~" means ~~devices that are designed to protect a person from falling, to include side rails, safety vest or safety belt.~~

(6) [(8)] "Qualified dietician" or "nutritionist" means:

(a) A person who has a bachelor of science degree in foods and nutrition, food service management, institutional management or related services and has successfully completed a dietetic internship or coordinated undergraduate program accredited by the American Dietetic Association (ADA) and is a member of the ADA or is registered as a dietician by ADA; or

(b) A person who has a master's degree in nutrition and is a member of ADA or is eligible for registration by ADA; or

(c) A person who has a bachelor of science degree in home economics and three (3) years of work experience with a registered dietician.

(7) [(9)] "Restraint" means any pharmaceutical agent or physical or mechanical device used to restrict the movement of a patient or the movement of a portion of a patient's body.

Section 2. Scope of Operations and Services. Intermediate care facilities are establishments with permanent facilities including inpatient beds. Services provided include twenty-four (24) hour supervision of patients, services including physician, nursing, pharmaceutical, personal care, activities and residential services. Patients in an intermediate care facility must have a physical or mental condition that requires intermittent nursing services along with continuous supervision of the activities of daily living.

Section 3. Administration and Operation. (1) Licensee. The licensee shall be legally responsible for the facility and for compliance with federal, state and local laws and regulations pertaining to the operation of the facility.

(2) Administrator.

(a) All facilities shall have an administrator who is responsible for the operation of the facility and who shall delegate such responsibility in his absence. The administrator shall not be the nursing services supervisor in a facility with more than sixty (60) beds.

(b) The licensee shall contract for professional and supportive services not available in the facility as dictated by the needs of the

patient. The contract shall be in writing.

(3) Administrative records.

(a) The facility shall maintain a bound, permanent, chronological patient registry showing date of admission, name of patient, and date of discharge.

(b) The facility shall require and maintain written recommendations or comments from consultants regarding the program and its development on a per visit basis.

(c) Menu and food purchase records shall be maintained.

(d) A written report of any incident or accident involving a patient (including medication errors or drug reactions), visitor or staff shall be made and signed by the administrator or nursing service supervisor, and any staff member who witnessed the incident. The report shall be filed in an incident file.

(4) Policies. The facility shall establish written policies and procedures that govern all services provided by the facility. The written policies shall include:

(a) Patient care and services to include physician, nursing, pharmaceutical (including medication stop orders policy), and residential services.

(b) Adult and child protection. The facility shall have written policies which assure the reporting of cases of abuse, neglect or exploitation of adults and children [~~to the Department for Human Resources~~] pursuant to KRS Chapters 209 and 620.

(c) Use of restraints. The facility shall have a written policy that addresses the use of restraints and a mechanism for monitoring and controlling their use.

(d) Missing patient procedures. The facility shall have a written procedure to specify in a step-by-step manner the actions which shall be taken by staff when a patient is determined to be lost, unaccounted for or on other unauthorized absence.

(5) Patient rights. Patient rights shall be provided for pursuant to KRS 216.510 to 216.525.

(6) Admission.

(a) Patients shall be admitted only upon the referral of a physician. The facility shall admit only persons who have a physical or mental condition which requires intermittent nursing services and continuous supervision of activities of daily living. The facility shall not admit persons whose care needs exceed the capability of the facility.

(b) Upon admission the facility shall obtain the patient's medical diagnosis, physician's orders for the care of the patient and the transfer form. Within seventy-two (72) hours after admission the facility shall obtain a medical evaluation from the patient's physician including current medical findings, medical history and physical examination. The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital or long-term facility if done within fourteen (14) days prior to admission.

(c) Before admission the patient and a responsible member of his family or committee shall be informed in writing of the established policies of the facility including fees, reimbursement, visitation rights during serious illness, visiting hours, type of diets offered and services rendered.

(d) The facility shall provide and maintain a system for identifying each patient's personal property and facilities for safekeeping of his declared valuables. Each patient's clothing and other property shall be reserved for his own use.

(7) Discharge planning. The facility shall have a discharge planning program to assure the continuity of care for patients being transferred to another health care facility or being discharged to the home.

(8) Transfer and discharge. The facility shall comply with the requirements of 900 KAR 2:050 when transferring or discharging residents. [Transfer procedures and agreements.]

(a) The facility shall have written transfer procedures and agreements for the transfer of patients to other health care facilities which can provide a level of inpatient care not provided by the facility. Any facility which does not have a transfer agreement in effect but which documents a good faith attempt to enter into such an agreement shall be considered to be in compliance with the licensure requirement. The transfer procedures and agreements shall specify the responsibilities each institution assumes in the transfer of patients and establish responsibility for notifying the other institution promptly of the impending transfer of a patient and arrange for appropriate and safe transportation.

(b) When the patient's condition exceeds the scope of services of

the facility, the patient, upon physician's orders (except in cases of emergency), shall be transferred promptly to a hospital or a skilled nursing facility, or services shall be contracted for from another community resource.

(c) When changes and progress occur which would enable the patient to function in a less structured and restrictive environment, and the less restrictive environment cannot be offered at the facility, the facility shall offer assistance in making arrangements for patients to be transferred to facilities providing appropriate services.

(d) Except in an emergency, the patient, his next of kin, or guardian, if any, and the attending physician shall be consulted in advance of the transfer or discharge of any patient.

(e) When a transfer is to another level of care within the same facility, the complete medical record or a current summary thereof shall be transferred with the patient.

(f) If the patient is transferred to another health care facility or home to be cared for by a home health agency, a transfer form shall accompany the patient. The transfer form shall include at least: physician's orders (if available), current information relative to diagnosis with history of problems requiring special care, a summary of the course of prior treatment, special supplies or equipment needed for patient care, and pertinent social information on the patient and his family.

(9) Tuberculosis testing. All employees and patients shall be tested for tuberculosis in accordance with the provisions of 902 KAR 20:200, Tuberculosis testing in long term care facilities.

(10) Personnel.

(a) Job descriptions. Written job descriptions shall be developed for each category of personnel, to include qualifications, lines of authority and specific duty assignments.

(b) Employee records. Current employee records shall be maintained and shall include a resume of each employee's training and experience, evidence of current licensure or registration where required by law, health records, records of in-service training and ongoing education, and the employee's name, address and social security number.

(c) Staffing requirements.

1. The facility shall have adequate personnel to meet the needs of the patients on a twenty-four (24) hour basis. The number and classification of personnel required shall be based on the number of patients and the amount and kind of personal care, nursing care, supervision and program needed to meet the needs of the patients as determined by medical orders and by services required by this administrative regulation.

2. When the staff to [7] patient ratio does not meet the needs of the patients, the Division for Licensing and Regulation shall determine and inform the administrator in writing how many additional personnel are to be added and of what job classification and shall give the basis for this determination.

3. A responsible staff member shall be on duty and awake at all times to assure prompt, appropriate action in cases of injury, illness, fire or other emergencies.

4. Volunteers shall not be counted to make up minimum staffing requirements.

5. Supervision of nursing services shall be by a registered nurse or licensed practical nurse employed on the day shift seven (7) days per week. The supervisor shall have training in rehabilitative nursing. When a licensed practical nurse serves as the supervisor, consultation shall be provided by a registered nurse at regular intervals, not less than four (4) hours weekly. The responsibilities of the nursing services supervisor shall include:

a. Developing and maintaining nursing service objectives, standards of nursing practice, nursing procedure manuals, and written job descriptions for each level of nursing personnel.

b. Recommending to the administrator the number and levels of nursing personnel to be employed, participating in their recruitment and selection and recommending termination of employment when necessary.

c. Assigning and supervising all levels of nursing care.

d. Participating in planning and budgeting for nursing care.

e. Participating in the development and implementation of patient care policies.

f. Coordinating nursing services with other patient care services.

g. Participating in the screening of prospective patients in terms of

required nursing services and nursing skills available.

h. Assuring that a written monthly assessment of the patient's general condition is completed.

i. Assuring that the establishment, review and modification of nursing care plans for each patient is done by licensed nursing personnel.

j. Assuring that all medications are administered by licensed personnel or by other personnel who have completed a state-approved training program.

k. Assuring that a monthly review of each patient's medications is completed and notifying the physician when changes are appropriate.

6. The facility shall employ a licensed pharmacist on a full-time, part-time or consultant basis to direct pharmaceutical services.

7. Each facility shall have a full-time person designated by the administrator, responsible for the total food service operation of the facility and on duty a minimum of thirty-five (35) hours each week.

8. Each facility shall designate a person for the following areas who will be responsible for:

a. Medical records;

b. Arranging for social services; and

c. Developing and implementing the activities program and therapeutic recreation.

9. Supportive personnel, consultants, assistants and volunteers shall be supervised and shall function within the policies and procedures of the facility.

(d) Health requirements. No employee contracting an infectious disease shall appear at work until the infectious disease can no longer be transmitted.

(e) Orientation program. The facility shall conduct an orientation program for all new employees to include review of all facility policies (that relate to the duties of their respective jobs), services and emergency and disaster procedures.

(f) In-service training.

1. All employees shall receive in-service training and ongoing education to correspond with the duties of their respective jobs.

2. All nursing personnel shall receive in-service or continuing education programs at least quarterly.

(11) Medical records.

(a) The facility shall develop and maintain a system of records retention and filing to insure completeness and prompt location of each patient's record. The records shall be held confidential. The records shall be in ink or typed and shall be legible. Each entry shall be dated and signed. Each record shall include:

1. Identification data including the patient's name, address and social security number (if available); name, address and telephone number of referral agency; name and telephone number of personal physician; name, address and telephone number of next of kin or other responsible person; and date of admission.

2. Admitting medical evaluation by a physician including current medical findings, medical history, physical examination and diagnosis. (The medical evaluation may be a copy of the discharge summary or history and physical report from a hospital, skilled nursing facility if done within fourteen (14) days prior to admission.)

3. ~~The physician's~~ Dated and signed orders for medication, diet, and therapeutic services.

4. Physician's progress notes describing significant changes in the patient's condition, written at the time of each visit.

5. Findings and recommendations of consultants.

6. A medication sheet which contains the date, time given, name of each medication dosage, name of prescribing physician, for advanced registered nurse practitioner, for therapeutically-certified optometrist, or physician assistant, and name of person who administered the medication.

7. Nurse's notes indicating changes in patient's condition, actions, responses, attitudes, appetite, etc. Nursing personnel shall make notation of response to medications, response to treatments, mode and frequency of PRN medications administered, condition necessitating administration of PRN medication, reaction following PRN medication, visits by physician and phone calls to the physician, medically prescribed diets and preventive, maintenance or rehabilitative nursing measures.

8. Written assessment of the patient's monthly general condition.

9. Reports of dental, laboratory and x-ray services (if applicable).

10. Changes in patient's response to the activity and therapeutic

recreation program.

11. A discharge summary, signed and dated by the attending physician within one (1) month of discharge from the facility.

(b) Retention of records. After patient's death or discharge the completed medical record shall be placed in an inactive file and retained for five (5) years or, in case of a minor, three (3) years after the patient reaches the age of majority under state law, whichever is the longest.

#### Section 4. Provision of Services. (1) General requirements.

(a) Patient care equipment. There shall be a sufficient quantity of patient care equipment of satisfactory design and in good condition to carry out established patient care procedures. The equipment shall include:

1. Wheelchairs with brakes;
2. Walkers;
3. Bedside rails;
4. Bedpans and urinals (permanent or disposable);
5. Emesis basins and wash basins (permanent or disposable);
6. Footstools;
7. Bedside commodes;
8. Foot cradles;
9. Foot boards;
10. Under-the-mattress bed boards;
11. Trapeze frames;
12. Transfer board; and

13. An autoclave for sterilization of nursing equipment and supplies or an equivalent alternate method of sterilization.

(b) Infection control and communicable diseases.

1. There shall be written infection control policies, which are consistent with the Centers for Disease Control guidelines including:

a. Policies which address the prevention of disease transmission to and from patients, visitors and employees, including:

(i) Universal blood and body fluid precautions;

(ii) Precautions for infections which can be transmitted by the airborne route; and

(iii) Work restrictions for employees with infectious diseases.

b. Policies which address the cleaning, disinfection, and sterilization methods used for equipment and the environment.

2. The facility shall provide in-service education programs on the cause, effect, transmission, prevention and elimination of infections for all personnel responsible for direct patient care.

3. Sharp wastes.

a. Sharp wastes, including needles, scalpels, razors, or other sharp instruments used for patient care procedures, shall be segregated from other wastes and placed in puncture resistant containers immediately after use.

b. Needles shall not be recapped by hand, purposely bent or broken, or otherwise manipulated by hand.

c. The containers of sharp wastes shall either be incinerated on or off site, or be rendered nonhazardous by a technology of equal or superior efficacy, which is approved by both the Cabinet for Health Services [Human Resources] and the Natural Resources and Environmental Protection Cabinet.

4. Disposable waste.

a. All disposable waste shall be placed in suitable bags or closed containers so as to prevent leakage or spillage, and shall be handled, stored, and disposed of in such a way as to minimize direct exposure of personnel to waste materials.

b. The facility shall establish specific written policies regarding handling and disposal of all wastes.

c. The following wastes shall be disposed of by incineration, autoclaved before disposal, or carefully poured down a drain connected to a sanitary sewer: blood, blood specimens, used blood tubes, or blood products.

d. Any wastes conveyed to a sanitary sewer shall comply with applicable federal, state, and local pretreatment regulations [pursuant to 40 CFR 403 and 401-KAR 5:055, Section 9].

5. Patients infected with the following diseases shall not be admitted to the facility unless the patient's attending physician certifies in writing that the condition of the patient is not communicable to others in the long-term care environment: anthrax, campylobacteriosis, cholera, diphtheria, hepatitis A, measles, pertussis, plague, poliomyelitis, rabies (human), rubella, salmonellosis, shigellosis, typhoid fever, yer-

siniosis, brucellosis, giardiasis, leprosy, psittacosis, Q fever, tularemia, and typhus. If an attending physician is in doubt regarding the communicability of a patient's condition, he may contact the Department for Health Services.

6. A facility may admit a noninfectious tuberculosis patient under continuing medical supervision for his tuberculosis disease.

7. Patients with active tuberculosis may be admitted to the facility whose isolation facilities and procedures have been specifically approved by the cabinet.

8. If, after admission, a patient is suspected of having a communicable disease that would endanger the health and welfare of other patients the administrator shall assure that a physician is contacted and that appropriate measures are taken on behalf of the patient with the communicable disease and the other patients.

(c) Use of restraints [or protective devices].

1. [If a patient becomes disturbed or unmanageable, the patient's physician shall be notified in order to evaluate and direct the patient's care:

2.] No [form of] restraints [or protective devices] shall be used except as permitted by KRS 216.515(6). [upon written orders of the attending physician:

a. Protective devices. Protective devices may be used to protect the patient from falling from a bed or chair. The least restrictive form of protective device shall be used which affords the patient the greatest possible degree of mobility. In no case shall a locking device be used.

b. Physical restraint.]

2. Restraints that require lock and key shall not be used. [In an emergency, restraints may be used temporarily, but in no case for a period to exceed twelve (12) hours.]

3. Restraints shall be applied only by appropriately trained personnel [trained in the proper application and observation of this equipment. Restraints shall be checked at least every one-half (1/2) hour and released at least ten (10) minutes every two (2) hours. The checks and releases of restraints shall be recorded in the patient's medical record as they are completed. Such records shall document the rationale or justification for the use of the procedure, a description of the specific procedures employed, and the physician's order. Restraints shall be used only as a therapeutic measure to prevent the patient from causing physical harm to self or others].

4. Restraints shall not be used as a punishment, as discipline, as a convenience for the staff, or as a mechanism to produce regression. [Restraints shall be comfortable and easily removed in case of an emergency:

c. Chemical restraints. Chemical restraints shall not be used as punishment, for the convenience of the staff, as a substitute for programs, or in quantities that interfere with the patient's habilitation.]

(2) Physician services. All patients shall be under the medical supervision of a licensed physician. These services shall include:

(a) Physician's visit for medical evaluation as often as necessary and in no case less often than every sixty (60) days, unless justified and documented by the attending physician in the patient's medical report.

(b) Physician services for medical emergencies available on a twenty-four (24) hour, seven (7) days-a-week basis.

(3) Nursing services. Nursing services shall include:

(a) The establishment of a nursing care plan for each patient. Each plan shall be reviewed and modified as necessary, or at least quarterly. Each plan shall include goals and nursing care needs;

(b) Rehabilitative nursing care to achieve and maintain the highest degree of function, self-care and independence. Rehabilitative measures shall be practiced on a twenty-four (24) hour, seven (7) day week basis. Those procedures requiring medical approval shall be ordered by the attending physician. Rehabilitative measures shall include:

1. Positioning and turning. Nursing personnel shall encourage and assist patients in maintaining good body alignment while standing, sitting, or lying in bed.

2. Exercises. Nursing personnel shall assist patients in maintaining maximum joint range of motion or active range of motion.

3. Bowel and bladder training. Nursing personnel shall make every effort to train incontinent patients to gain bowel and bladder control.

4. Training in activities of daily living. Nursing personnel shall encourage and when necessary teach patients to function at their maximum level in appropriate activities of daily living for as long as,

and to the degree that, they are able.

5. Ambulation. Nursing personnel shall assist and encourage patients with daily ambulation unless otherwise ordered by the physician.

(c) Administration of medications including oral, rectal, hypodermic, and intramuscular;

(d) Written monthly assessment of the patient's general condition by licensed nursing personnel;

(e) Treatments such as: enemas, irrigations, catheterizations, applications of dressings or bandages, supervision of special diets;

(f) The recording of any changes, as they occur, in the patient's condition, actions, responses, attitudes, appetite, etc.

(g) Implementing a regular program to prevent decubiti with emphasis on the following:

1. Procedures to maintain cleanliness of the patient, his clothes and linens shall be followed each time the bed or the clothing is soiled. Rubber, plastic, or other type of linen protectors shall be properly cleaned and completely covered to prevent direct contact with the patient.

2. Special effort shall be made to assist the patient in being up and out of bed as much as his condition permits, unless medically contraindicated. If the patient cannot move himself, he shall have his position changed as often as necessary but not less than every two (2) hours.

(4) Pharmaceutical services.

(a) The facility shall provide appropriate methods and procedures for obtaining, dispensing, and administering drugs and biologicals, developed with the advice of a licensed pharmacist or a pharmaceutical advisory committee which includes one (1) or more licensed pharmacists.

(b) If the facility has a pharmacy department, a licensed pharmacist shall be employed to administer the pharmacy department.

(c) If the facility does not have a pharmacy department, it shall have provision for promptly obtaining prescribed drugs and biologicals from a community or institutional pharmacy holding a valid pharmacy permit issued by the Kentucky Board of Pharmacy, pursuant to KRS 315.035.

(d) An emergency medication kit approved by the facility's professional personnel shall be kept readily available. The facility shall maintain a record of what drugs are in the kit and document how the drugs are used.

(e) Medication requirement and services.

1. ~~[Conformance with physician's orders.]~~ All medications administered to patients shall be ordered in writing by the prescribing physician, or advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), or therapeutically-certified optometrist in the practice of optometry as defined in KRS 320.210(2), or physician assistant as authorized in KRS 311.560(3) and (4). Oral orders shall be given only to a licensed nurse or pharmacist, immediately reduced to writing, and signed. Medications not specifically limited as to time or number of doses, when ordered, shall be automatically stopped in accordance with the facility's written policy on stop orders. A registered nurse or the pharmacist shall review each patient's medical profile monthly. Medications shall be reviewed at least quarterly by the attending or staff physician. The patient's attending physician shall be notified of stop order policies and contacted promptly for renewal of such orders so that continuity of the patient's therapeutic regimen is not interrupted. Medications shall be released to patients on discharge or visits only after being labeled appropriately and on the written authorization of the physician.

2. Administration of medications. All medications shall be administered by licensed nurses or personnel who have completed a state-approved training program, from a state approved training provider. Each dose administered shall be recorded in the medical record. Intramuscular injections shall be administered by a licensed nurse or a physician. If intravenous injections are necessary they shall be administered by a licensed physician or registered nurse.

a. The nursing station shall have items required for the proper administration of medications.

b. Medications prescribed for one (1) patient shall not be administered to any other patient.

c. Self-administration of medications by patients shall not be permitted except on special order of the patient's physician and a predischarge program under the supervision of a licensed nurse.

d. Medication errors and drug reactions shall be immediately reported to the patient's physician and pharmacist and an entry thereof made in the patient's medical record as well as on an incident report.

3. The facility shall provide up-to-date medication reference texts for use by the nursing staff (e.g., Physician's Desk Reference).

4. Labeling and storing medications. All medications shall be plainly labeled with the patient's name, the name of the drug, strength, name of pharmacy, prescription number, date, physician name, caution statements and directions for use except where accepted modified unit dose systems conforming to federal and state laws are used. The medications of each patient shall be kept and stored in their original containers and transferring between containers shall be prohibited. All medicines kept by the facility shall be kept in a locked place and the persons in charge shall be responsible for giving the medicines and keeping them under lock and key. Medications requiring refrigeration shall be kept in a separate locked box of adequate size in the refrigerator in the medication area. Drugs for external use shall be stored separately from those administered by mouth and injection. Provisions shall also be made for the locked separate storage of medications of deceased and discharged patients until such medication is surrendered or destroyed in accordance with federal and state laws and regulations.

5. Controlled substances. Controlled substances shall be kept under double lock (e.g., in a locked box in a locked cabinet). There shall be a controlled substances record, in which is recorded the name of the patient; the date, time, kind, dosage, balance remaining and method of administration of all controlled substances; the name of the physician who prescribed the medications; and the name of the nurse who administered it, or staff who supervised the self-administration. In addition, there shall be a recorded and signed Schedule II controlled substances count daily, and Schedule III, IV and V controlled substances count once per week by those persons who have access to controlled substances. All controlled substances which are left over after the discharge or death of the patient shall be destroyed in accordance with ~~[KRS 218A.230, or] 21 CFR 1307.21[- or sent via registered mail to the Controlled Substances Enforcement Branch of the Kentucky Cabinet for Human Resources].~~

(5) Personal care services.

(a) All facilities shall provide services to assist patients to achieve and maintain good personal hygiene including the level of assistance necessary with:

1. Bathing of the body to maintain clean skin and freedom from offensive odors. In addition to assistance with bathing, the facility shall provide soap, clean towels, and wash cloths for each patient. Toilet articles such as brushes and combs shall not be used in common.

2. Shaving.

3. Cleaning and trimming of fingernails and toenails.

4. Cleaning of the mouth and teeth to maintain good oral hygiene as well as care of the lips to prevent dryness and cracking. All patients shall be provided with tooth brushes, a dentifrice, and denture containers, when applicable.

5. Washing, grooming, and cutting of hair.

(b) The staff shall encourage and assist the patients to dress in their own street clothing (unless otherwise indicated by the physician).

(6) Dental services. The facility shall assist patients in obtaining dental services. Conditions necessitating dental services shall be noted and such dental procedures and services provided shall be recorded in the patient's record.

(7) Social services. The facility shall provide or arrange for social services as needed by the patient.

(a) Social services shall be integrated with other elements of the plan of care.

(b) A plan for such care shall be recorded in the patient's record and periodically evaluated in conjunction with the patient's total plan of care.

(c) Social services records shall be maintained as an integral part of case record maintained on each patient.

(8) Activities and therapeutic recreation.

(a) All facilities shall provide a program to stimulate physical and mental abilities to the fullest extent, to encourage and develop a sense of usefulness and self respect and to prevent, inhibit or correct the development of symptoms of physical and mental regression due to illness or old age. The program shall provide sufficient variety to meet the needs of the various types of patients in the facility. When possi-

ble, the patient shall be included in the planning of activities.

(b) All facilities shall meet the following program requirements:

1. Staff. A person designated by the administrator shall be responsible for the program.

2. A program shall be developed for each patient and shall be incorporated in the patient's plan of care and revised according to the patient's needs. Changes in his response to the program shall be recorded in the medical record.

3. There shall be a planned and supervised activity period each day. The schedule shall be current and posted.

4. The program shall be planned for group and individual activities, both within and outside of the facility, weather permitting.

5. The person responsible for activities shall maintain a current list of patients on which precautions are noted regarding a patient's condition that might restrict or modify his participation in the program.

6. A living or recreation room and outdoor recreational space shall be provided for patients and their guests.

7. The facility shall provide supplies and equipment for the activities program.

8. Reading materials, radios, games and TV sets shall be provided for the patients.

9. The program may include religious activities for each patient if it is the desire of the patient to participate. Requests from a patient to be seen by a clergyman shall be acted upon as soon as possible, and an area of private consultation shall be made available.

10. The facility shall allow the patient to leave the facility to visit, shop, attend church, or other social activities provided this does not endanger his health or safety.

(9) Transportation.

(a) If transportation of patients is provided by the facility to community agencies or other activities, the following shall apply:

1. Special provision shall be made for patients who use wheelchairs.

2. An escort or assistant to the driver shall be provided in transporting patients to and from the facility if necessary for the patient's safety.

(b) The facility shall arrange for appropriate transportation in case of medical emergencies.

(10) Residential care services. All facilities shall provide residential care services to all patients including: room accommodations, housekeeping and maintenance services, and dietary services. All facilities shall meet the following requirements relating to the provision of residential care services.

(a) Room accommodations.

1. Each patient shall be provided a standard size bed at least thirty-six (36) inches wide, equipped with substantial springs, a clean comfortable mattress, a mattress cover, two (2) sheets and a pillow, and such bed covering as is required to keep the patients comfortable. Rubber or other impervious sheets shall be placed over the mattress cover whenever necessary. Beds occupied by patients shall be placed so that no patient may experience discomfort because of proximity to radiators, heat outlets, or by exposure to drafts.

2. The facility shall provide window coverings, bedside tables with reading lamps (if appropriate), comfortable chairs, chest or dressers with mirrors, a night light, and storage space for clothing and other possessions.

3. Patients shall not be housed in unapproved rooms or unapproved detached buildings.

4. Basement rooms shall not be used for sleeping rooms for patients.

5. Patients may have personal items and furniture when it is physically feasible.

6. There shall be a sufficient number of tables provided that can be rolled over a patient's bed or be placed next to a bed to serve patients who cannot eat in the dining room.

7. Each living room or lounge area and recreation area shall have an adequate number of reading lamps, and tables and chairs or settees of sound construction and satisfactory design.

8. Dining room furnishings shall be adequate in number, well constructed and of satisfactory design for the patients.

9. Each patient shall be permitted to have his own radio and television set in his room unless it interferes with or is disturbing to other patients.

(b) Housekeeping and maintenance services.

1. The facility shall maintain a clean and safe facility free of unpleasant odors. Odors shall be eliminated at their source by prompt and thorough cleaning of commodes, urinals, bedpans and other obvious sources.

2. An adequate supply of clean linen shall be on hand at all times. Soiled clothing and linens shall receive immediate attention and shall not be allowed to accumulate. Clothing or bedding used by one (1) patient shall not be used by another until it has been laundered or dry cleaned.

3. Soiled linen shall be placed in washable or disposable containers, transported in a sanitary manner and stored in separate, well-ventilated areas in a manner to prevent contamination and odors. Equipment or areas used to transport or store soiled linen shall not be used for handling or storing of clean linen.

4. Soiled linen shall be sorted and laundered in the soiled linen room in the laundry area. Hand-washing facilities with hot and cold water, soap dispenser and paper towels shall be provided in the laundry area.

5. Clean linen shall be sorted, dried, ironed, folded, transported, stored and distributed in a sanitary manner.

6. Clean linen shall be stored in clean linen closets on each floor, close to the nurses' station.

7. Personal laundry of patients or staff shall be collected, transported, sorted, washed and dried in a sanitary manner, separate from bed linens.

8. Patients' personal clothing shall be laundered by the facility as often as is necessary. Patients' personal clothing shall be laundered by the facility unless the patient or the patient's family accepts this responsibility. Patients capable of laundering their own personal clothing and wishing to do so may, instead, be provided the facilities to do so. Patient's personal clothing laundered by the facility shall be marked to identify the patient-owner and returned to the correct patient.

9. Maintenance. The premises shall be well kept and in good repair. Requirements shall include:

a. The facility shall insure that the grounds are well kept and the exterior of the building, including the sidewalks, steps, porches, ramps and fences are in good repair.

b. The interior of the building including walls, ceilings, floors, windows, window coverings, doors, plumbing and electrical fixtures shall be in good repair. Windows and doors shall be screened.

c. Garbage and trash shall be stored in areas separate from those used for the preparation and storage of food and shall be removed from the premises regularly. Containers shall be cleaned regularly.

d. A pest control program shall be in operation in the facility. Pest control services shall be provided by maintenance personnel of the facility or by contract with a pest control company. The compounds shall be stored under lock.

(c) Dietary services. The facility shall provide or contract for food service to meet the dietary needs of the patients including modified diets or dietary restrictions as prescribed by the attending physician. When a facility contracts for food service with an outside food management company, the company shall provide a qualified dietician on a full-time, part-time or consultant basis to the facility. The qualified dietician shall have continuing liaison with the medical and nursing staff of the facility for recommendations on dietetic policies affecting patient care. The company shall comply with all of the appropriate requirements for dietary services in this administrative regulation.

1. Therapeutic diets. If the designated person responsible for food service is not a qualified dietician or nutritionist, consultation by a qualified dietician or qualified nutritionist shall be provided.

2. Dietary staffing. There shall be sufficient food service personnel employed and their working hours, schedules of hours, on duty and days off shall be posted. If any food service personnel are assigned duties outside the dietary department, the duties shall not interfere with the sanitation, safety or time required for regular dietary assignments.

3. Menu planning.

a. Menus shall be planned, written and rotated to avoid repetition. Nutrition needs shall be met in accordance with the current recommended dietary allowances of the Food and Nutrition Board of the National Research Council adjusted for age, sex and activity, and in accordance with physician's orders.

b. Meals shall correspond with the posted menu. Menus must be

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

planned and posted one (1) week in advance. When changes in the menu are necessary, substitutions shall provide equal nutritive value and the changes shall be recorded on the menu and kept on file for thirty (30) days.

c. The daily menu shall include daily diet for all modified diets served within the facility based on an approved diet manual. The diet manual shall be a current manual with copies available in the dietary department, that has the approval of the professional staff of the facility. The diet manual shall indicate nutritional deficiencies of any diet. The dietician shall correlate and integrate the dietary aspects of the patient care with the patient and patient's chart through such methods as patient instruction, recording diet histories and participation in rounds and conferences.

4. Food preparation and storage.

a. There shall be at least a three (3) day supply of food to prepare well balanced palatable meals.

b. Food shall be prepared with consideration for any individual dietary requirement. Modified diets, nutrient concentrates and supplements shall be given only on the written orders of a physician, [or] advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), or physician assistant as authorized in KRS 311.560(3) and (4).

c. At least three (3) meals per day shall be served with not more than a fifteen (15) hour span between the substantial evening meal and breakfast. Between-meal snacks to include an evening snack before bedtime shall be offered to all patients. Adjustments shall be made when medically indicated.

d. Foods shall be prepared by methods that conserve nutritive value, flavor and appearance and shall be attractively served at the proper temperatures, and in a form to meet the individual needs. A file of tested recipes, adjusted to appropriate yield shall be maintained. Food shall be cut, chopped or ground to meet individual needs. If a patient refuses foods served, nutritional substitutions shall be offered.

e. All opened containers or leftover food items shall be covered and dated when refrigerated.

5. Serving of food. When a patient cannot be served in the dining room, trays shall be provided for bedfast patients and shall rest on firm supports such as overbed tables. Sturdy tray stands of proper height shall be provided for patients able to be out of bed.

a. Correct positioning of the patient to receive his tray shall be the responsibility of the direct patient care staff. Patients requiring help in eating shall be assisted.

b. Adaptive self-help devices shall be provided to contribute to the patient's independence in eating.

6. Sanitation. All facilities shall comply with all applicable provisions of KRS 219.011 to KRS 219.081 and 902 KAR 45:005 ~~((Kentucky's Food Service Establishment Act and Food Service Code))~~.

Section 5. Separability. If any clause, sentence, paragraph, section or part of these administrative regulations shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof, directly involved in the controversy in which the judgment was rendered.

TIMOTHY L. VENO, Inspector General

JOHN MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: March 11, 1998

FILED WITH LRC: March 13, 1998 at 3 p.m.

### **CABINET FOR HEALTH SERVICES Office of Inspector General (As Amended at ARRS, July 14, 1998)**

**902 KAR 20:180. Psychiatric hospitals; operation and services.**

RELATES TO: KRS 216B.010 to 216B.131, 216B.990

STATUTORY AUTHORITY: KRS 216B.042, 216B.105, 311.560(3), (4), 314.011(8), 314.042(8), 320.240(14), EO 96-862

NECESSITY, FUNCTION, AND CONFORMITY: KRS 216B.042

and 216B.105 mandate that the Kentucky Cabinet for Health Services regulate health facilities and health services. This administrative regulation provides minimum licensure requirements for the operation and services of psychiatric hospitals and for the provision of psychiatric services in general hospitals which have a psychiatric unit. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Office of Inspector General and its programs under the Cabinet for Health Services.

Section 1. Definitions. (1) "Governing authority" means the individual, agency, partnership, or corporation, in which the ultimate responsibility and authority for the conduct of the institution is vested.

(2) "Professional staff" means psychiatrists and other physicians, psychologists, psychiatric nurses and other nurses, social workers and other professionals with special education or experience in the care of the mentally ill who are involved in the diagnosis and treatment of patients with mental illness.

(3) "Psychiatric unit" means a department of a general acute care hospital consisting of eight (8) or more psychiatric beds organized for the purpose of providing psychiatric services.

(4) "Restraint" means the application of any physical device, the application of physical body pressure by another person in such a way as to control or limit physical activity, or the intravenous, intramuscular, or subcutaneous administration of any pharmacologic or chemical agent to a mentally ill patient with the sole or primary purpose of controlling or limiting the physical activities of the patient.

(5) "Seclusion" means the confinement of a mentally ill or mentally retarded patient alone in a locked room.

Section 2. Scope of Operation and Services. Psychiatric hospitals are establishments with organized professional staffs and permanent facilities with inpatient beds, which provide general medical and psychiatric services, continuous nursing services, psychological services, therapeutic activities, social services, and related support services for the diagnosis and treatment of patients who have a variety of mental illnesses.

Section 3. Applicability. (1) General acute care hospitals which have a psychiatric unit shall designate the location and number of beds to be licensed as psychiatric beds and shall meet the requirements of 902 KAR 20:016 and the additional requirements contained in this administrative regulation. A facility requesting licensure as a psychiatric hospital exclusively shall meet the requirements of this administrative regulation.

(2) A facility shall not be licensed as or be called a psychiatric hospital unless it provides the full range of services required by this administrative regulation and provides for the treatment of a variety of mental illnesses. Facilities which receive certificate of need approval and are licensed after the effective date of this administrative regulation which have, according to the last Annual Hospital Utilization Report, an average daily census of patients whose primary illness is alcoholism or other chemical dependency exceeding ten (10) percent of the licensed bed capacity shall apply for a certificate of need to convert an appropriate number of beds to be licensed under 902 KAR 20:160, Chemical dependency treatment services.

Section 4. Administration and Operation. (1) General requirements.

(a) The hospital shall comply with the requirements of 902 KAR 20:016, Section 3 and the additional requirements contained in this section.

(b) The hospital shall comply with the requirements of KRS Chapters 202A and 202B and 902 KAR Chapter 12, Hospitalization of mentally ill and mentally retarded.

(2) Professional staff. A facility requesting licensure as a psychiatric hospital exclusively which operates with an organized professional staff shall comply with the following requirements rather than those in 902 KAR 20:016, Section 3(8):

(a) The hospital shall have a professional staff organized under bylaws approved by the governing authority, which is responsible to the governing authority of the hospital for the quality of clinical care provided to patients and for the ethical conduct and professional practice of its members.

(b) The professional staff shall develop and adopt policies or by-



laws, subject to the approval of the governing authority, which shall:

1. Require that a licensed physician be responsible for admission, diagnosis, all medical care and treatment, and discharge; 2. State the necessary qualifications for professional staff membership;

3. Define and describe the responsibilities and duties of each category of professional staff (e.g., active, associate, courtesy, consulting, or honorary), delineate the clinical privileges of staff members, and establish a procedure for granting and withdrawing staff privileges, to include credentials review;

4. Provide a mechanism for appeal of decisions regarding staff membership and privileges;

5. Provide a method for the selection of officers of the professional staff;

6. Establish requirements regarding the frequency of, and attendance at, general staff and department or service meetings of the professional staff; and

7. Provide for the appointment of standing and special committees, and include requirements for composition and organization, frequency of and attendance at meetings, and the minutes and reports which shall be part of the permanent records of the hospital. These committees may include: executive committee, credentials committee, medical audit committee, medical records committee, infections control committee, pharmacy and therapeutic committee, utilization review committee and quality assurance committee.

(c) The hospital shall develop a process of appointment to the professional staff which will assure that the person requesting staff membership is appropriately licensed, certified, registered, or experienced, and qualified for the privileges and responsibilities sought.

(3) Policies.

(a) The hospital's written admission and discharge policies shall be consistent with the requirements of KRS Chapters 202A and 202B and 902 KAR Chapter 12, Hospitalization of Mentally Ill and Mentally Retarded.

(b) The hospital shall have written policies pertaining to patient rights and the use of restraints and seclusion consistent with KRS Chapters 202A and 202B and 902 KAR Chapter 12, Hospitalization of Mentally Ill and Mentally Retarded.

(c) The hospital shall also have written policies concerning the use of special treatment procedures that may have abuse potential, or be life-threatening, and specifying the qualifications required for professional staff using special treatment procedures.

(4) Patient rights. The hospital shall assure that patient rights are provided for pursuant to the requirements of KRS Chapters 202A and 202B and 902 KAR Chapter 12, Hospitalization of Mentally Ill and Mentally Retarded.

(5) Medical records.

(a) Patient information shall be released only on written consent of the patient or the patient's authorized representative, or as otherwise authorized by law. The written consent shall contain the following information:

1. The name of the person, agency or organization to which the information is to be disclosed;

2. The specific information to be disclosed;

3. The purpose of disclosure; and

4. The date the consent was signed and the signature of the individual witnessing the consent.

(b) In addition to the requirements of 902 KAR 20:016, Section 3(11)(d) the medical record shall contain:

1. Appropriate court orders or consent of patient, appropriate family members or guardians for admission, evaluation, and treatment;

2. A provisional or admitting diagnosis which includes a physical diagnosis, if applicable, as well as a psychiatric diagnosis;

3. Results of the psychiatric evaluation;

4. A complete social history;

5. An individualized comprehensive treatment plan;

6. Progress notes, dated and signed by physician, nurse, social worker, psychologist, or other appropriate individuals involved in treatment of patient. Progress notes shall document all services and treatments provided and the patient's progress in response to such services and treatments;

7. A record of the patient's weight;

8. Special clinical justification for the use of special treatment procedures specified in Section 5(3) of this administrative regulation;

9. A discharge summary which includes a recapitulation of the

patient's hospitalization and recommendations from appropriate services concerning follow-up or after care as well as a brief summary of the patient's condition on discharge;

10. If a patient dies, a summation statement in the form of a discharge summary, including events leading to the death, signed by the attending physician; and

11. When an autopsy is performed, a provisional anatomic diagnosis shall be included in the patient's record within seventy-two (72) hours, with the complete summary and pathology report, including cause of death, recorded within three (3) months.

Section 5. Patient Management. (1) Assessment. The hospital shall be responsible for conducting a complete assessment of each patient.

(a) A provisional or admitting diagnosis, which includes the diagnosis of physical diseases, if applicable, as well as the psychiatric diagnosis, shall be made on each patient at the time of admission.

(b) A physical examination of each patient shall be completed and appropriate laboratory tests shall be initiated within twenty-four (24) hours after admission. A physician shall be responsible for assessing each patient's physical health.

(c) A psychiatric evaluation for each patient shall be completed within seventy-two (72) hours of admission. It shall include a medical history; a record of mental status; details regarding onset of illness and circumstances leading to admission; a description of attitudes and behavior; an estimate of intellectual functioning, memory functioning, and orientation; and an inventory of the patient's assets in a descriptive, not interpretative, fashion.

(d) A social assessment of each patient shall be recorded.

(e) An activities assessment of each patient shall be prepared and shall include information relating to the patient's current skills, talents, aptitudes, and interest.

(f) When appropriate, nutritional, vocational, and legal assessments shall be conducted. The legal assessment shall be used to determine the extent to which the patient's legal status will influence progress in treatment.

(2) Treatment plans. Each patient shall have a written individualized treatment plan that is based on assessments of his clinical needs and approved by the patient's attending physician. Overall development and implementation of the treatment plan shall be assigned to appropriate members of the professional staff.

(a) Within seventy-two (72) hours following admission, a designated member of the professional staff shall develop an initial treatment plan that is based on at least an assessment of the patient's presenting problems, physical health, emotional and behavioral status. Appropriate therapeutic efforts shall begin before a master treatment plan is finalized.

(b) A master treatment plan shall be developed by a multidisciplinary team within ten (10) days for any patient remaining in treatment beyond the initial evaluation. It shall be based on a comprehensive assessment of the patient's needs and include a substantiated diagnosis and the short-term and long-range treatment needs and address the specific treatment modalities required to meet the patient's needs.

1. The treatment plan shall include referrals for services not provided directly by the facility.

2. The treatment plan shall contain specific and measurable goals for the patient to achieve.

3. The treatment plan shall describe the services, activities, and programs to be provided to the patient, and shall specify staff members assigned to work with the patient and also the time and frequency for each treatment procedure.

4. The treatment plan shall specify criteria to be met for termination of treatment.

5. The patient shall participate to the maximum extent feasible in the development of his treatment plan, and such participation shall be documented in the patient's record.

6. A specific plan for involving the patient's family or significant others shall be included in the treatment plan when indicated.

7. The treatment plan shall be reviewed and updated through multidisciplinary case conferences as clinically indicated, but in no case shall this review and update be completed later than thirty (30) days following the first ten (10) days of treatment and every sixty (60) days thereafter for the first year of treatment.

8. Following one (1) year of continuous treatment, the review and

update may be conducted at three (3) month intervals.

(3) Special treatment procedures.

(a) Special documentation shall be included in the patient's medical record concerning the use of restraints, seclusion and other special treatment procedures which may have abuse potential or be life threatening.

(b) The documentation shall include a physician's, [or] advanced registered nurse practitioner's as authorized in KRS 314.011(8) and 314.042(8), or physician assistant's as authorized in KRS 311.560(3) and (4) written order, justification for the use of the procedure, the required consent forms, a description of any procedures employed to protect the patient's safety and rights, and a description of the procedure used.

(c) The use of physical restraints and seclusion shall be governed by the following:

1. Restraint or seclusion shall be used only to prevent a patient from injuring himself or others, or to prevent serious disruption of the therapeutic program;

2. A written, time-limited order from a physician, [or] advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), or physician assistant as authorized in KRS 311.560(3) and (4) shall be required for the use of restraint or seclusion;

3. The head of the medical staff shall give written approval when restraint or seclusion is utilized for longer than twenty-four (24) hours;

4. PRN orders shall not be used to authorize the use of restraint or seclusion;

5. The head of the medical staff or his designee shall review daily all uses of restraint or seclusion and investigate unusual or possibly unwarranted patterns of utilization;

6. Restraint or seclusion shall not be used in a manner that causes undue physical discomfort, harm, or pain to the patient;

7. Appropriate attention shall be paid every fifteen (15) minutes to a patient in restraint or seclusion, especially in regard to regular meals, bathing, and use of the toilet; and staff shall document in the patient's record that such attention was given to the patient; and

[8. In no case shall a locking restraint be used.]

(d) Locking restraints may be used in the circumstances outlined in subparagraph 5 of this paragraph, if prior to the facility's use, the cabinet finds that the facility has instituted policies which comply with the provisions of paragraph (c) of this subsection and the following additional requirements:

1. The facility's direct care nursing staff shall have in their possession at least two (2) keys [a key] to the locking restraint so that the restraint can be immediately removed in the case of an emergency and a plan setting forth designated nursing staff responsible for the keys [who should use the key] and how the keys are to be used;

2. Orders for the locking restraints shall be time-limited as follows:

a. Four (4) hours for adults up to a maximum of twenty-four (24) hours wherein the continued need for the restraint shall be evaluated at fifteen (15) minute [four (4) hour] intervals until the maximum time is reached;

b. Two (2) hours for children and adolescents ages nine (9) to seventeen (17) up to a maximum of twenty-four (24) hours wherein the continued need for the restraint shall be evaluated at fifteen (15) minute [two (2) hour] intervals until the maximum time is reached;

c. One (1) hour for patients under the age of nine (9) up to a maximum of twenty-four (24) hours wherein the continued need for the restraint shall be evaluated at fifteen (15) minute [one (1) hour] intervals until the maximum time is reached; and

d. Orders pursuant to this paragraph shall specify the restraint type and criteria for release in the patient's medical record.

3. If, after twenty-four (24) hours, a patient still needs restraints, the patient shall receive a face-to-face reassessment by a licensed physician for continuation of the use of the restraint. If the restraint is continued, the physician shall write a time-limited order according to the time frames set out in subsection (2) of this section;

4. A facility may reinstitute the use of a restraint that has been discontinued if the time frame limited order for the restraint has not expired; and

5. A facility found to be in compliance with this section may use locking restraints only under the following circumstances:

a. For the transport of forensic or other impulsively violent patients;

b. For the crisis situation stabilization of forensic and other impulsively violent patients;

c. To prevent a patient that has demonstrated the ability to remove themselves from a nonlocking restraint on one (1) or more occasions from harming themselves or others; or

d. For patients requiring ambulatory restraints as approved by a behavioral health management team.

Section 6. Provision of Services. (1) Psychiatric and general medical services.

(a) Psychiatric services shall be under the supervision of a clinical director, service chief, or equivalent, who is qualified to provide the leadership required for an intensive treatment program.

1. The clinical director, or equivalent, shall be certified by the American Board of Psychiatry and Neurology, or meet the training and experience requirements for examination by the board.

2. If the psychiatrist in charge of the clinical program is not board certified, there shall be evidence that consultation is given to the clinical program on a continuing basis by a psychiatrist certified by the American Board of Psychiatry and Neurology.

(b) General medical services provided in the hospital shall be under the direction of a physician member of the professional staff in accordance with staff privileges granted by the governing authority.

1. The attending physician shall assume full responsibility for diagnosis and care of his patient. Physician assistants and advanced registered nurse practitioners may provide services in accordance with their scope of practice and the hospital's protocols and bylaws.

2. A physician member of the professional staff shall conduct and record a complete history and physical examination for the patient within twenty-four (24) hours after admission to the hospital.

3. All incidental medical services necessary for the care and support of patients shall be provided by in-house staff or through agreement with outside resources. When the patient's condition requires services not available in the hospital, the patient, upon physician's orders (except in cases of emergency), shall be transferred promptly to an appropriate level of care.

4. There shall be a written plan delineating the manner in which emergency services are provided by the hospital or through clearly defined arrangements with another facility. The plan shall clearly specify the following:

a. The arrangements the hospital has made to assure that the patient being transferred for emergency services to a nonpsychiatric facility will continue to receive further evaluation or treatment of his psychiatric problem, as needed;

b. The policy for referring patients needing continued psychiatric care after emergency services back to the referring facility; and

c. The policy concerning notification of the patient's family of emergencies and of arrangements that have been made for referring or transferring the patient to another facility for emergency service.

(c) Physician services shall be available twenty-four (24) hours a day on at least an on-call basis.

(d) There shall be sufficient physician staff coverage for all psychiatric and medical services of the hospital in keeping with their size and scope of activity.

(e) The attending physician shall state his final diagnosis, complete the discharge summary and sign the records within fifteen (15) days following the patient's discharge.

(2) Nursing services.

(a) The hospital shall have a nursing department organized to meet the nursing care needs of the patients and maintain established standards of nursing practice.

(b) The psychiatric nursing service shall be under the direction of a registered nurse who:

1. Has a master's degree in psychiatric or mental health nursing, or its equivalent, from a school of nursing accredited by the National League for Nursing; or

2. Has a baccalaureate degree in nursing with two (2) years' experience in nursing administration or supervision and experience in psychiatric nursing.

(c) There shall be a registered nurse on duty twenty-four (24) hours a day.

(d) There shall be an adequate number of registered nurses, licensed practical nurses, and other nursing personnel to provide the nursing care necessary under each patient's active treatment pro-

gram.

(e) There shall be continuing in-service and staff development programs to prepare the registered nurses and other nursing personnel for active participation in interdisciplinary meetings affecting the planning or implementation of nursing care plans for patients.

(3) Psychological services.

(a) The hospital shall provide psychological services to meet the needs of patients.

(b) Psychological services shall be provided under the direction of a licensed psychologist.

(c) There shall be an adequate number of psychologists, consultants, and supporting personnel to assist in essential diagnostic formulations, and to participate in program development and evaluation of program effectiveness, in training activities and in therapeutic interventions.

(4) Therapeutic activities.

(a) The hospital shall provide a therapeutic activities program that is appropriate to the needs and interests of the patients and is directed toward restoring and maintaining optimal levels of physical and psychosocial functioning.

(b) The number of qualified therapists, support personnel, and consultants shall be adequate to provide comprehensive therapeutic activities, such as occupational, recreational, and physical therapy, consistent with each patient's active treatment program.

(5) Pharmaceutical services. The hospital shall comply with requirements of 902 KAR 20:016, Section 4(5) and the following additional requirements:

(a) Medications shall be administered by a registered nurse, a physician, or dentist, except in the case of a licensed practical nurse under the supervision of a registered nurse.

(b) No medication shall be given without a written order signed by a physician, [or] dentist when applicable, [or] advanced registered nurse practitioner as authorized in KRS 314.011(8) and 314.042(8), [or] therapeutically-certified optometrist as authorized in KRS 320.240(14), or physician assistant as authorized in KRS 311.560(3) and (4). Telephone orders for medications shall be given only to licensed practical or registered nurses or a pharmacist and signed by the physician, dentist, advanced registered nurse practitioner, [or] therapeutically-certified optometrist, or physician assistant within twenty-four (24) hours from the time the order is given. Telephone orders may be given to licensed physical, occupational, speech or respiratory therapists in accordance with the therapist's scope of practice and the hospital's protocols.

(6) Laboratory services. The hospital shall comply with the requirements of 902 KAR 20:016, Section 4(4) concerning the provision of laboratory and pathology services.

(7) Social services.

(a) The hospital shall provide social services to meet the need of the patients.

(b) There shall be a director of social services who has a master's degree from an accredited school of social work.

(c) There shall be an adequate number of social workers, consultants, and other assistants or case aides to perform the following functions:

1. Secure information about patients development and current life situations to provide psychosocial data for diagnosis and treatment planning and for direct therapeutic services to patients, patient groups or families;

2. Identification or development of community resources including family or foster care programs;

3. Participate in interdisciplinary conferences and meetings concerning diagnostic formulation, treatment planning and progress reviews; and

4. Participate in discharge planning, arrange for follow-up care, and develop mechanisms for exchange of appropriate information with sources outside the hospital.

(8) Dietary services. The hospital shall comply with the requirements of 902 KAR 20:016, Section 4(3), pertaining to the provision of dietary services, plus the additional requirements contained in this subsection.

(a) Dietary service personnel who have personal contact with the patients shall be made aware that emotional factors may cause patients to change their food habits and shall inform appropriate members of the professional staff of any change.

(b) Meals shall be provided in central dining areas for ambulatory patients.

(9) Radiology services. If radiology services are provided within the facility, the hospital shall comply with the requirements of 902 KAR 20:016, Section 4(6) concerning the provision of such services. If they are not provided within the facility, the hospital shall have arrangements with an outside source, which shall be outlined in a written plan, for the provision of radiology services. The outside radiology service shall have a current license or registration pursuant to KRS 211.842 to 211.852 and any administrative regulations promulgated thereunder.

(10) Other services. If surgery, anesthesia, physical therapy or outpatient services are provided within the facility, the hospital shall comply with the applicable sections of 902 KAR 20:016.

(11) Chemical dependency treatment services. Psychiatric hospitals providing chemical dependency treatment services shall meet the requirements of 902 KAR 20:160, Sections 3 and 4, and designate the location and number of beds to be used for this purpose.

TIMOTHY L. VENNO, Inspector General

JOHN MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: April 1, 1998

FILED WITH LRC: April 3, 1998 at 3 p.m.

**CABINET FOR HEALTH SERVICES**  
**Department for Public Health**  
**Division of Public Health Protection and Safety**  
**(As Amended at ARRS, July 14, 1998)**

**902 KAR 100:010. Definitions.**

RELATES TO: KRS 211.842 to 211.852, 211.990(4), 10 CFR 20.1003-20.1005

STATUTORY AUTHORITY: KRS 194.050, 211.090, 211.844, 10 CFR 20.1003-20.1005

NECESSITY, FUNCTION, AND CONFORMITY: KRS 211.844 authorizes the Cabinet for Health Services [Human Resources] to provide by administrative regulation for the registration and licensing of the possession or use of sources of ionizing or electronic product radiation and the handling and disposal of radioactive waste. This administrative regulation provides definitions as applicable to 902 KAR Chapters 100 and 105.

Section 1. Definitions. As used in these administrative regulations, these terms have the definitions set forth below:

(1) "A<sub>1</sub>" and "A<sub>2</sub>."

(a) "A<sub>1</sub>" means the maximum activity of special form radioactive material permitted in a Type A package;

(b) "A<sub>2</sub>" means the maximum activity of radioactive material, other than special form radioactive material, permitted in a Type A package;

(c) These values are listed in 902 KAR 100:070, Section 21, or may be derived under the procedure prescribed in 902 KAR 100:070, Section 20.

(2) "Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the rad and the gray (Gy).

(3) "Accelerator" means a machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of one (1) MeV, such as the cyclotron, synchrotron, synchrocyclotron, betatron, linear accelerator, and Van de Graaff electrostatic generator.

(4) "Accessible surface" means the external surface of the enclosure or housing provided by the manufacturer.

(5) "Act" means KRS 211.842 to 211.852.

(6) "Activity" means the rate of disintegration (transformation) or decay of radioactive material. The units of activity are the curie (Ci) and the becquerel (Bq).

(7) "Address of use" means the building or buildings that are identified on the license and where radioactive material may be received, used or stored.

(8) "Adult" means an individual eighteen (18) or more years of age.

(9) "Agreement state" means a state with which the United States Nuclear Regulatory Commission or the United States Atomic Energy Commission has entered into an effective agreement under subsection 274 b. of the Atomic Energy Act of 1954, as amended (73 Stat. 689).

(10) "Airborne radioactive material" means radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

(11) "Airborne radioactivity area" means a room, enclosure, or area in which airborne radioactive material, composed wholly or partly of radioactive material, exists in concentrations:

(a) In excess of the derived air concentrations (DACs) specified in 902 KAR 100:019, Section 44; or

(b) To a degree that an individual is present in the area without respiratory protective equipment may exceed during the hours an individual is present in a week, an intake of six-tenths (0.6) percent of the annual limit on intake (ALI) or twelve (12) DAC-hours.

(12) "Aluminum equivalent" means the thickness of type 1100 (ninety-nine (99.0) percent minimum aluminum, 0.12 percent copper) aluminum affording the same attenuation, under specified conditions, as the material in question.

(13) "Analytical x-ray systems" means a system which utilizes x-rays for the examination of the structure of materials, such as x-ray diffraction and spectrographic equipment.

(14) "Annual limit on intake (ALI)" means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the reference man that would result in a committed effective dose equivalent of five (5) rems (0.05 Sv) or a committed dose equivalent of fifty (50) rems (five-tenths (0.5) Sv) to an individual organ or tissue. (ALI values for intake by ingestion and by inhalation of selected radionuclides are given in 902 KAR 100:019, Section 44, Table I, Columns 1 and 2.)

(15) "Area of use" means a portion of a physical structure that has been set aside for the purpose of receiving, using or storing radioactive material.

(16) "As low as reasonably achievable (ALARA)" means making every reasonable effort to maintain exposures to radiation as far below the dose limits in 902 KAR 100:019 as practical, consistent with the purpose for which the licensed activity is undertaken. ALARA shall take into account the state of technology, the economics of improvement in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, in relation to the utilization of nuclear energy and radioactive materials in the public interest.

(17) "Attenuation" means the reduction of exposure rate upon passages of radiation through matter.

(18) "Attenuation block" means a block or stack, having dimensions twenty (20) cm by twenty (20) cm by three and eight-tenths (3.8) cm, of type 1100 aluminum alloy or other materials having equivalent attenuation.

(19) "Authorized nuclear pharmacist" means a pharmacist who is:

(a) Board certified as a nuclear pharmacist by the Board of Pharmaceutical Specialties; or

(b) Identified as an authorized nuclear pharmacist on a cabinet, Agreement State or U.S. Nuclear Regulatory license that authorizes the use of radioactive material in the practice of nuclear pharmacy.

(20) "Automatic exposure control" means a device which automatically controls one (1) or more technique factors in order to obtain at a preselected location a required quantity of radiation.

(21) "Authorized user" means a physician, dentist, or podiatrist, identified as an authorized user on a cabinet, U.S. Nuclear Regulatory Commission, or another agreement state license that authorizes the medical use of radioactive material.

(22) "Background radiation" means radiation from cosmic sources, naturally occurring radioactive materials, including radon (except as a decay product of source or special nuclear material), and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the license. Background radiation shall not include radiation from radioactive materials regulated by the Cabinet for Human Resources.

(23) "Beam axis" means a line from the source through the centers of the x-ray fields.

(24) "Beam limiting device" (collimator) means a device which

provides a means to restrict the dimensions of the x-ray field.

(25) "Beam monitoring system" means a system designed to detect and measure the radiation present in the useful beam.

(26) "Becquerel" means a unit, in the International System of Units (SI), of measurement of radioactivity equal to one (1) transformation per second.

(27) "Bioassay (radiobioassay)" means the determination of kinds, quantities or concentrations, and, in some cases, the locations of radioactive material in the human body, by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body.

(28) "Brachytherapy" means a method of radiation therapy in which an encapsulated source or group of sources is utilized to deliver [beta or gamma] radiation at a distance of up to a few centimeters, by surface, intracavitary, or interstitial application.

(29) "Broker" (waste broker) means a person who takes possession of low-level waste solely for the purposes of consolidation and shipment.

(30) "By-product material" means:

(a) Radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; and

(b) The tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes. Underground ore bodies depleted by these solution extraction operations shall not constitute by-product material within this definition.

(31) "Cabinet" means Cabinet for Human Resources, or its duly authorized representatives.

(32) "Cabinet radiography" means industrial radiography conducted in an enclosure or cabinet shielded so that radiation levels at every location on the exterior meet the limitations specified in 902 KAR 100:019, Section 11.

(33) "Cabinet x-ray systems" means an x-ray system with the x-ray tube installed or used in a permanent enclosure in which the enclosure is intended to contain at least that portion of the material being irradiated. The enclosure may be the architectural structure or may be independent of the architectural structure, but regardless, the structure of the enclosure shall provide attenuation of the radiation to meet the requirements of 902 KAR 100:105, relating to the possession, use, and operation of x-ray systems, and shall exclude personnel from its interior during the generation of x-radiation. This definition shall not include x-ray systems used by licensed practitioners of the healing arts.

(34) "Calendar quarter" means not less than twelve (12) consecutive weeks nor more than fourteen (14) consecutive weeks. The first calendar quarter of each year shall begin in January and subsequent calendar quarters shall be arranged so that no day is included in more than one (1) calendar quarter and no day in a one (1) year period is omitted from inclusion within a calendar quarter. No licensee or registrant shall change the method observed of determining calendar quarters except at the beginning of a calendar year.

(35) "Calibration" means the determination of:

(a) The response or reading of an instrument relative to a series of known radiation values over the range of the instrument; or

(b) The strength of a source of radiation relative to a standard.

(36) "Carrier" means a person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

(37) "Cephalometric device" means a device intended for the radiographic visualization and measurement of the dimensions of the human head.

(38) "Certified cabinet x-ray system" means an x-ray system which has been certified under 21 CFR 1010.2 as being manufactured and assembled according to the provisions of 21 CFR 1020.40.

(39) "Certified components" means components of x-ray systems which shall be subject to regulations promulgated under 21 CFR Subchapter J.

(40) "Certified system" means an x-ray system which has one (1) or more certified component.

[(38) "Certified cabinet x-ray system" means an x-ray system which has been certified under 21 CFR 1010.2 as being manufactured and assembled according to the provisions of 21 CFR 1020.40.]

(41) "CFR" means Code of Federal Regulations.

(42) "Changeable filters" means a filter, exclusive of inherent filtration, which can be removed from the useful beam through an electronic, mechanical, or physical process.

(43) "Class (or lung class or inhalation class)" means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials shall be classified as D, W, or Y, which applies to a range of clearance half-times: for Class D (Days) of less than ten (10) days, and for Class W (Weeks) from ten (10) to 100 days, and for Class Y (Years) of greater than 100 days.

(44) "Collective dose" means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

(45) "Collimator" means a device used to limit the size, shape, and direction of the primary radiation beam.

(46) "Commission" means the Nuclear Regulatory Commission or its duly authorized representatives.

(47) "Committed dose equivalent ( $H_{T,50}$ )" means the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the fifty (50) year period following the intake.

(48) "Committed effective dose equivalent ( $H_{E,50}$ )" means the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to these organs or tissues ( $H_{E,50} = \sum W_T H_{T,50}$ ).

(49) "Computed tomography (CT)" means the production of a tomogram by the acquisition and computer processing of x-ray transmission data.

(50) "Constraint (dose constraint)" means a value above which specified licensee actions are required.

(51) "Contact therapy system" means an x-ray system used for therapy with the x-ray tube port placed in contact with or within five (5) centimeters of the surface being treated.

(52) "Control panel" means that part of the x-ray control upon which are mounted the switches, knobs, push buttons, and other hardware necessary for manually setting the technique factors.

(53) "Controlled area" means an area, outside of a restricted area but inside the site boundary, to which access can be limited by the licensee or registrant for a reason.

(54) "Cooling curve" means the graphical relationship between heat units stored and cooling time.

(55) "Curie" means a quantity of radioactivity. One (1) curie (Ci) is that quantity of radioactive material which decays at the rate of  $3.7 \times 10^{10}$  disintegrations per second (dps). Commonly used submultiples of the curie are the millicurie and the microcurie. One (1) millicurie (mCi) = 0.001 curie =  $3.7 \times 10^7$  dps. One (1) microcurie (uCi) = 0.000001 curie =  $3.7 \times 10^4$  dps.

(56) "Dead man switch" means a switch so constructed that a circuit closing contact can be maintained only by continuous pressure on the switch by the operator.

(57) "Declared pregnant woman" means a woman who has voluntarily informed her employer, in writing, of her pregnancy and the estimated date of conception.

(58) "Decommission" means to remove, as a facility, safely from service and reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of license.

(59) "Dedicated check source" means a radioactive source that is used to assure the constant operation of a radiation detection or measurement device over several months or years. The source may also be used for other purposes.

(60) "Deep-dose equivalent ( $H_d$ )" which applies to external whole-body exposure, means the dose equivalent at a tissue depth of one (1) centimeter (cm) ( $1000 \text{ mg/cm}^2$ ).

(61) "Depleted uranium" means the source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

(62) "Derived air concentration (DAC)" means the concentration of a given radionuclide in air which, if breathed by the reference man for a working year of 2,000 hours under conditions of light work (inhalation rate one and two-tenths (1.2) cubic meters of air per hour), results in an intake of one (1) ALI. DAC values are given in 902 KAR 100:019, Section 44, Table I, Column 3.

(63) "Derived air concentration-hour (DAC-hour)" means the

product of the concentration of radioactive material in air (expressed as a fraction or multiple of the derived air concentration for each radionuclide) and the time of exposure to that radionuclide, in hours. A licensee may take 2,000 DAC-hours to represent one (1) ALI, equivalent to a committed effective dose equivalent of five (5) rems (0.05 Sv).

(64) "Diagnostic clinical procedure manual" means a collection of written procedures that describes each method, and other instructions and precautions, by which the licensee performs diagnostic clinical procedures where each diagnostic clinical procedure has been approved by the authorized user and includes the radiopharmaceutical, dosage, and route of administration.

(65) "Diagnostic source assembly" means the tube housing assembly with a beam-limiting device attached.

(66) "Diagnostic-type protective tube housing" means an x-ray tube housing so constructed that the leakage radiation measured at a distance of one (1) meter from the source cannot exceed 100 milliroentgens in one (1) hour if the tube is operated at its maximum continuous rated current for the maximum tube potential.

(67) "Diagnostic x-ray system" means an x-ray system designed for irradiation of a part of the human body for the purpose of diagnosis or visualization.

(68) "Direct scatter radiation" means that scattered radiation which has been deviated in direction only by materials irradiated by the useful beam. (See also "scattered radiation").

(69) "Disposal" means the disposition of waste as authorized by 902 KAR 100:021.

(70) "Dose" or "radiation dose" is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, or total effective dose equivalent.

(71) "Dose commitment" means the total radiation dose to a part of the body that results from retention in the body of radioactive material. For purposes of estimating the dose commitment, it is assumed that from the time of intake the period of exposure to retained material shall not exceed fifty (50) years.

(72) "Dose equivalent ( $H_T$ )" means the product of the absorbed dose in tissue, quality factor, and other necessary modifying factors at the location of interest. The units of dose equivalent are the rem and sievert (Sv).

(73) "Dosimetry processor" means an individual or an organization that processes and evaluates individual monitoring equipment in order to determine the radiation dose delivered to the equipment [ $H_{E,50} = \sum W_T H_{T,50}$ ].

(74) "Effective dose equivalent ( $H_E$ )" means the sum of the products of the dose equivalent to the organ or tissue ( $H_T$ ) and the weighting [weighting] factors ( $W_T$ ) applicable to each of the body organs or tissues that are irradiated ( $H_E = \sum W_T H_T$ ).

(75) "Embryo or fetus" means the developing human organism from conception until the time of birth.

(76) "Entrance or access point" means a location through which an individual may gain access to radiation areas or to radioactive materials. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.

(77) "Entrance exposure rate" means the roentgens per unit time at the point the center of the useful beam enters the patient.

(78) "Exclusive use" (also referred to in other administrative regulations as "sole use" or "full load") means the sole use of a conveyance by a single consignor in which initial, intermediate, and final loading and unloading are carried out under the direction of the consignor or consignee.

(79) "Exposure" means being exposed to ionizing radiation or to radioactive material.

(80) "Exposure rate" means the exposure per unit of time, such as roentgen per minute and milliroentgen per hour.

(81) "External dose" means that portion of the dose equivalent received from radiation sources outside the body.

(82) "Extremity" means hand, elbow, arm below the elbow, foot, knee, or leg below the knee.

(83) "Eye dose equivalent" means to the external exposure of the lens of the eye and means the dose equivalent at a tissue depth of three-tenths (0.3) centimeter ( $300 \text{ mg/cm}^2$ ).

(84) "Facility" means the location at which one (1) or more devices or sources are installed or located within one (1) building, vehicle, or



under one (1) roof and are under the same administrative control.

(85) "Field emission equipment" means equipment which uses an x-ray tube in which electron emission from the cathode is due solely to the action of an electric field.

(86) "Field station" means a facility where radioactive sources may be stored or used and from which equipment is dispatched to temporary job sites.

(87) "Filter" means the material in the useful beam which usually absorbs preferentially the less penetrating radiations.

(a) "Inherent filtration" means the filter permanently in the useful beam. It includes the window of the x-ray tube and the permanent tube enclosure.

(b) "Added filter" means the filter added to the inherent filtration.

(c) "Total filter" means the sum of the inherent and added filters.

(88) "Fissile material" means special nuclear material consisting of or containing one (1) or more fissile radionuclides. Fissile radionuclides are plutonium-238, plutonium-239, plutonium-241, uranium-233, and uranium-235. Neither natural or depleted uranium is fissile material. (Cabinet jurisdiction extends only to special nuclear material if quantities are not sufficient to form a critical mass as defined in this administrative regulation.)

(a) Fissile Class I: a package which may be transported in unlimited numbers and in an unspecified arrangement, and which requires no nuclear criticality safety controls during transportation. A transport index is not assigned for purposes of nuclear criticality safety, but may be required because of external radiation levels.

(b) Fissile Class II: a package which may be transported together with other packages in an unspecified arrangement but, for criticality control, in numbers which do not exceed an aggregate transport index of fifty (50). These shipments require no other nuclear criticality safety control during transportation. Individual packages may have a transport index not less than 0.1 and not more than ten (10).

(89) "Fluoroscopic imaging assembly" means a component which comprises a reception system in which x-ray photons produce a fluoroscopic image. It includes equipment housings, electrical interlocks if present, the primary protective barrier, and structural material providing linkage between the image receptor and the diagnostic source assembly.

(90) "Focal spot" means the area projected on the anode of the x-ray tube by the electrons accelerated from the cathode and from which the useful beam originates.

(91) "Former U.S. Atomic Energy Commission (AEC) or U.S. Nuclear Regulatory Commission (NRC) licensed facilities" means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

(92) "General purpose radiographic x-ray system" means a radiographic x-ray system which, by design, is not limited to radiographic examination of specific anatomical regions.

(93) "Generally applicable environmental radiation standards" means standards issued by the Environmental Protection Agency (EPA) under the authority of 42 USC sec. 2011 et seq. that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

(94) "Generator" (waste generator) means a person who produces or possesses low-level radioactive waste in the course of or incident to manufacturing, power generation, processing, medical diagnosis and treatment, research, education or other activity.

(95) "Gonad shield" means a protective barrier for the testes or ovaries.

(96) "Gray (Gy)" means the SI unit of absorbed dose. One (1) gray shall be equal to an absorbed dose of one (1) Joule/kilogram (100 rads).

(97) "Half-value layer (HVL)" means the thickness of specified material which attenuates the beam of radiation to an extent that the exposure rate is reduced to one-half (1/2) of its original value. In this definition, the contribution of scattered radiation, other than that which might be present initially in the beam concerned, shall be deemed to be excluded.

(98) "Healing arts screening" means the testing of human beings using x-ray machines for the detection or evaluation of health indications if these tests are not specifically and individually ordered by a

licensed practitioner of the healing arts legally authorized to prescribe these x-ray tests for the purpose of diagnosis or treatment.

(99) "Heat unit" means a unit of energy equal to the product of the peak kilovoltage, milliamperes, and seconds, such as kVp x mA x seconds.

(100) "High radiation area" means an area, accessible to individuals, in which radiation levels may result in an individual receiving a dose equivalent in excess of one-tenth (0.1) rem (1m Sv) in one (1) hour at thirty (30) centimeters from the radiation source or from a surface that the radiation penetrates.

(101) "Human use" means the internal or external administration of radiation or radioactive materials to human beings.

(102) "Image intensifier" means a device which converts instantaneously by means of photoemissive surfaces and electronic circuitry an x-ray pattern into a light pattern of greater intensity than would have been produced by the original x-ray pattern.

(103) "Image receptor" means a device as a fluorescent screen or radiographic film which transforms incident radiation into a visual image or into another form which can be made into a visual image by further transformations.

(104) "Image receptor support" means for mammographic systems, that part of the system designed to support the image receptor in a horizontal plane during a mammographic examination.

(105) "Individual" means a human being.

(106) "Individual monitoring" means the assessment of:

(a) Dose equivalent by the use of devices designed to be worn by an individual;

(b) Committed effective dose equivalent by bioassay (see bioassay) or by determination of the time-weighted air concentrations to which an individual has been exposed, such as DAC-hours; or

(c) Dose equivalent by the use of survey data.

(107) "Individual monitoring devices (individual monitoring equipment)" means devices designed to be worn by a single individual for the assessment of dose equivalent, such as film badges, thermoluminescent dosimeters (TLDs), pocket ionization chambers, and personal ("lapel") air sampling devices.

(108) "Industrial radiography" means the examination of the macroscopic structure of materials by nondestructive methods utilizing sources of radiation.

(109) "Injection tool" means a device used for controlled subsurface injection of radioactive tracer material.

(110) "Inspection" means an examination or observation, such as tests, surveys, and monitoring, to determine compliance with rules, administrative regulations, orders, and requirements of the cabinet.

(111) "Interlock" means a device arranged or connected so that the occurrence of an event or condition is required before a second event or condition can occur or continue to occur.

(112) "Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.

(113) "Irradiation" means the exposure of matter to ionizing radiation.

(114) "Kilovolt peak (kVp)" means the crest value in kilovolts of the potential difference of a pulsating potential generator. If only one-half (1/2) of the wave is used, the value refers to the useful half of the wave.

(115) "Lead equivalent" means the thickness of lead affording the same attenuation, under specified conditions, as the material in question.

(116) "Leakage radiation" means radiation emanating from the diagnostic or therapeutic source assembly except for the useful beam.

(117) "Leakage technique factors" means the technique factors associated with the tube housing assembly which are used in measuring leakage radiation. They shall be defined as follows:

(a) For capacitor energy storage equipment, the maximum rated number of exposures in an hour for operation at the maximum rated peak tube potential with the quantity of charge per exposure being ten (10) milliamperes seconds (mAs) or the minimum obtainable from the unit, whichever is larger.

(b) For field emission equipment rated for pulsed operation, the maximum rated number of x-ray pulses in an hour for operation at the maximum rated peak tube potential.

(c) For all other equipment, the maximum rated continuous tube current for the maximum rated peak tube potential.

(118) "License" means a license issued by the cabinet under 902



KAR Chapter 100.

(119) "Licensed material" means radioactive material received, possessed, used, transferred, or disposed under a general or specific license issued by the cabinet under 902 KAR Chapter 100.

(120) "Licensee" means the holder of a license.

(121) "Limits (dose limits)" means the permissible upper bounds of radiation doses.

(122) "Lixiscope" means a portable light-intensified imaging device using a sealed source.

(123) "Logging assistant" means an individual who, under the personal supervision of a logging supervisor, handles sealed sources or tracers that are not in logging tools or shipping containers or who uses survey instruments in well-logging activities.

(124) "Logging supervisor" means the individual who provides personal supervision of the utilization of sources of radiation at the well site.

(125) "Logging tool" means a device used subsurface to perform well-logging.

(126) "Lost or missing licensed material" means licensed material whose location is unknown. It includes material that has been shipped but has not reached its destination and whose location cannot be readily traced in the transportation system.

(127) "Low-level radioactive waste" means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material as defined in Section 11e(2) of the Atomic Energy Act of 1954 (42 USC 2014).

(128) "Low specific activity material" means:

(a) Uranium or thorium ores and physical or chemical concentrates of those ores;

(b) Unirradiated natural or depleted uranium or unirradiated natural thorium;

(c) Tritium oxide in aqueous solutions provided the concentration does not exceed five (5.0) millicuries per milliliter; or

(d) Material in which the radioactivity is essentially uniformly distributed and in which the estimated average concentration per gram of contents shall not exceed:

1. 0.0001 millicurie of radionuclides for which the  $A_2$  quantity in 902 KAR 100:070 is not more than 0.05 curie;

2. 0.005 millicurie of radionuclides for which the  $A_2$  quantity in 902 KAR 100:070 is more than 0.05 curie, but not more than one (1) curie; or

3. 0.3 millicurie of radionuclides for which the  $A_2$  quantity in 902 KAR 100:070 is more than one (1) curie; or

(e) Objects of nonradioactive material externally contaminated with radioactive material, if the radioactive material is not readily dispersible and the surface contamination, averaged over an area of one (1) square meter, does not exceed 0.0001 millicurie (220,000 disintegrations per minute) per square centimeter of radionuclides for which the  $A_2$  quantity in 902 KAR 100:070 is not more than 0.05 curie, or 0.001 millicurie (2,200,000 disintegrations per minute) per square centimeter for other radionuclides.

(129) "mA" means milliamperes.

(130) "Management" means the chief executive officer or that individual's designee.

(131) "mAs" means milliamperes second.

(132) "Medical institution" means an organization in which several medical disciplines are practiced.

(133) "Medical use" means the intentional internal or external administration of radioactive material, or the radiation therefrom, to patients or human research subjects under the supervision of an authorized user, [humans-in-the-practice-of-the-healing-arts:]

(134) "Member of the public" means an individual except when [in a controlled or unrestricted area. An individual shall not be a member of the public during a period in which] the individual is receiving [receives] an occupational dose.

(135) "Microscopic analytical x-ray equipment" means a device which utilizes x-rays for examining the microscopic structure of materials. This includes x-ray diffraction and spectrographic equipment.

(136) "Mineral logging" means logging performed for the purpose of mineral exploration other than oil or gas.

(137) "Minor" means an individual less than eighteen (18) years of age.

(138) "Misadministration" means the administration of:

(a) A radiopharmaceutical dosage greater than thirty (30) microcu-

ries of sodium iodide I-125 or I-131:

1. Involving the wrong patient or human research subject or wrong radiopharmaceutical; or

2. If both the administered dosage differs from the prescribed dosage by more than twenty (20) percent of the prescribed dosage and the difference between the administered dosage and prescribe dosage exceeds thirty (30) microcuries.

(b) A therapeutic radiopharmaceutical dosage, other than sodium iodide I-125 or I-131:

1. Involving the wrong patient, or human research subject, radiopharmaceutical, or route of administration; or

2. If the administered dosage differs from the prescribed dosage by more than twenty (20) percent of the prescribed dosage.

(c) A gamma stereotactic radiosurgery radiation dose:

1. Involving the wrong patient or human research subject or treatment site; or

2. If the calculated total administered dose differs from the total prescribed dose by more than ten (10) percent of the total prescribed dose.

(d) A teletherapy radiation dose:

1. Involving the wrong patient, or human research subject, mode of treatment, or treatment site;

2. If the treatment consists of three (3) or fewer fractions and the calculated total administered dose differs from the total prescribed dose by more than ten (10) percent of the total prescribed dose;

3. If the calculated weekly administered dose is thirty (30) percent greater than the weekly prescribed dose; or

4. If the calculated total administered dose differs from the total prescribed dose by more than twenty (20) percent of the total prescribed dose.

(e) A brachytherapy radiation dose:

1. Involving the wrong patient or human research subject, radioisotope, or treatment site (excluding permanent implant seeds that were implanted in the correct site but migrated outside the treatment site);

2. Involving a sealed source that is leaking;

3. If, for a temporary implant, one (1) or more sealed sources are not removed upon completion of the procedure; or

4. If the calculated administered dose differs from the prescribed dose by more than twenty (20) percent of the prescribed dose.

(f) A diagnostic radiopharmaceutical dosage, other than quantities greater than thirty (30) microcuries of sodium iodide I-125 or I-131:

1. Involving the wrong patient or human research subject, radiopharmaceutical, route of administration, or if the administered dosage differs from the prescribed dosage; and

2. If the dose to the patient or human research subject exceeds five (5) rems effective dose equivalent or fifty (50) rems dose equivalent to an individual organ.

(139) "Mobile nuclear medicine service" means the transportation and medical use of radioactive material.

(140) "Monitoring (radiation monitoring, radiation protection monitoring)" means the measurement of radiation levels, concentrations, surface area concentrations or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses.

(141) "Nonstochastic effect" means health effects, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect (also called a deterministic effect).

(142) "Normal form radioactive material" means radioactive material which has not been demonstrated to qualify as "special form radioactive material."

(143) "NRC" means the Nuclear Regulatory Commission or its duly authorized representatives.

(144) "Occupational dose" means dose received by [exposure of] an individual [to radiation:

(a) ~~in a restrictive area; or~~

(b) in the course of employment in which the individual's assigned duties for the licensee or registrant involve exposure to [radiation and to radioactive material from licensed and unlicensed] sources of radiation, whether in the possession of the licensee, registrant, or other person. Occupational dose shall not include dose received from background radiation as a patient from medical practices, from voluntary participation in medical research programs, [or] as a member of the

[general] public or from exposure to individuals administered radioactive material and released in accordance with 902 KAR 100:073, Section 25.

(145) "Output" means the exposure rate, dose rate, or a quantity related in a known manner to these rates from a teletherapy unit for a specified set of exposure conditions.

(146) "Operating procedures" means detailed written instructions, such as the normal operation of equipment and movable shielding, closing of interlock circuits, manipulation of controls, radiation monitoring procedures for personnel and areas, testing of interlocks, and recordkeeping requirements.

(147) "Package" means the packaging together with its radioactive contents as presented for transport.

(148) "Packaging" means the assembly of components necessary to ensure compliance with the packaging requirements of 902 KAR 100:070. It may consist of one (1) or more receptacles, absorbent materials, spacing structures, thermal insulation, radiation shielding, and devices for cooling or absorbing mechanical shocks. The vehicle, tie-down system, and auxiliary equipment may be designated as part of the packaging.

(149) "Patient" means an individual subjected to healing arts examination, diagnosis, or treatment.

(150) "Peak tube potential" means the maximum value of the potential difference across the x-ray tube during an exposure.

(151) "Permanent radiographic installation" means an installation or structure designed or intended for radiography and in which radiography is regularly performed.

(152) "Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state or other state, or political subdivision or agency thereof, and a legal successor, representative, agent or agency of the foregoing.

(153) "Personal supervision" means guidance and instruction by the supervisor who is physically present at the job site and watching the performance of the operation in proximity so that contact can be maintained and immediate assistance given as required.

(154) "Personnel monitoring equipment" means a device designed to be worn or carried by an individual for the purpose of estimating the dose received by the individual, such as film badges, pocket dosimeters, and thermoluminescent dosimeters (TLD).

(155) "Phantom" means a volume of material behaving in a manner similar to tissue with respect to the attenuation and scattering of radiation.

(156) "Phototimer" means a method for controlling radiation exposures to image receptors by the amount of radiation which reaches a radiation monitoring device. The radiation monitoring device is part of an electronic circuit which controls the duration of time the tube is activated (see "automatic exposure control").

(157) "Physician" means an individual licensed to practice medicine or osteopathy in this state.

(158) "Planned special exposure" means an infrequent exposure to radiation, separate from and in addition to the annual dose limits.

(159) "Position indicating device" means a device on dental x-ray equipment used to indicate the beam position and to establish a definite source-surface (skin) distance. It may or may not incorporate or serve as a beam-limiting device.

(160) "Preregistrant" means a person who is preregistered with the cabinet for the intent of obtaining a radiation producing machine registerable under 902 KAR 100:110.

(161) "Preregistration" means preregistration with the cabinet as specified in 902 KAR 100:110.

(162) "Prescribed dosage" means the quantity of radiopharmaceutical activity as documented:

(a) In a written directive;

(b) In the diagnostic clinical procedures manual; or

(c) In an appropriate record in accordance with the directions of the authorized user for diagnostic procedures.

(163) "Prescribed dose" means:

(a) For gamma stereotactic radiosurgery, the total dose as documented in the written directive;

(b) For teletherapy, the total dose and dose per fraction as documented in the written directive; or

(c) For brachytherapy, the total source strength and exposure time or the total dose, as documented in the written directive.

(164) "Primary dose monitoring system" means a system which monitors the useful beam during irradiation and which terminates irradiation if a preselected number of dose monitor units have been acquired.

(165) "Protective apron" means an apron made of radiation absorbing materials of at least 0.25 mm lead equivalency. This requirement may be assumed to have been met if the HVL of the apron is not less than 0.25 mm lead at normal operating voltages.

(166) "Protective barrier" means a barrier of radiation absorbing material used to reduce radiation exposure.

(a) "Primary protective barrier" means a barrier sufficient to attenuate the useful beam to the required degree.

(b) "Secondary protective barrier" means a barrier sufficient to attenuate the stray radiation to the required degree.

(167) "Protective glove" means a glove made of radiation absorbing materials of at least 0.25 mm lead equivalency. This requirement may be assumed to have been met if the HVL of the glove is not less than 0.25 mm lead at normal operating voltages.

(168) "Public dose" means the dose received by a member of the public from sources of [exposure to] radiation from licensed or registered operations [and to radioactive material released by a licensee, or to another source of radiation within a licensee's controlled area or in unrestricted areas]. It shall not include occupational dose or doses received from background radiation, as a patient from medical practices, [or] from voluntary participation in medical research programs, or from exposure to individuals administered radioactive material and released in accordance with 902 KAR 100:073, Section 25.

(169) "Qualified expert" means an individual who has demonstrated to the satisfaction of the cabinet that he possesses the knowledge and training to measure ionizing radiation, to evaluate safety techniques, and to advise regarding radiation protection needs.

(170) "Quality factor (Q)" means the modifying factor that is used to derive dose equivalent from absorbed dose.

(a) Quality factors and absorbed dose equivalencies:

Type of Radiation	Quality Factor (Q)	Absorbed Dose Equal to a Unit Dose Equivalent <sup>a</sup>
X-, gamma, or beta radiation	1	1
Alpha particles, multiple-charged particles, fission fragments, and heavy particles of unknown charge	20	0.05
Neutrons of unknown energy	10	0.1
High-energy protons	10	0.1

<sup>a</sup>Absorbed dose in rad equal to one (1) rem or the absorbed dose in gray equal to one (1) sievert.

(b) If it is more convenient to measure the neutron fluence rate than to determine the neutron dose equivalent rate in rems per hour or sieverts per hour, as provided in paragraph (a) of this subsection, one (1) rem (0.01 sievert) of neutron radiation of unknown energies may, for purposes of the regulations in this part, be assumed to result from a total fluence of twenty-five (25) million neutrons per square centimeter incident upon the body. If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee may use the fluence rate per unit dose equivalent or the appropriate Q value from paragraph (c) of this subsection to convert a measured tissue dose in rads to dose equivalent in rems.

(c) Mean quality factors, Q, and fluency per unit dose equivalent for monoenergetic neutrons:

	Neutron Energy (MeV)	Quality Factor <sup>a</sup> (Q)	Fluency per Unit Dose Equivalent <sup>b</sup> (neutrons cm <sup>-2</sup> rem <sup>-1</sup> )
(thermal)	2.5 x 10 <sup>-8</sup>	2	980 x 10 <sup>6</sup>
	1 x 10 <sup>-7</sup>	2	980 x 10 <sup>6</sup>
	1 x 10 <sup>-6</sup>	2	810 x 10 <sup>6</sup>

$1 \times 10^{-5}$	2	$810 \times 10^6$
$1 \times 10^{-4}$	2	$840 \times 10^6$
$1 \times 10^{-3}$	2	$980 \times 10^6$
$1 \times 10^{-2}$	2.5	$1010 \times 10^6$
$1 \times 10^{-1}$	7.5	$170 \times 10^6$
$5 \times 10^{-1}$	11	$39 \times 10^6$
1	11	$27 \times 10^6$
2.5	9	$29 \times 10^6$
5	8	$23 \times 10^6$
7	7	$24 \times 10^6$
10	6.5	$24 \times 10^6$
14	7.5	$17 \times 10^6$
<u>20</u>	<u>8</u>	<u><math>16 \times 10^6</math></u>
<u>40</u>	<u>7</u>	<u><math>14 \times 10^6</math></u>
60	5.5	$16 \times 10^6$
$1 \times 10^2$	4	$20 \times 10^6$
$2 \times 10^2$	3.5	$19 \times 10^6$
$3 \times 10^2$	3.5	$16 \times 10^6$
$4 \times 10^2$	3.5	$14 \times 10^6$

<sup>a</sup>Value of quality factor (Q) at the point at which the dose equivalent is maximum in a thirty (30)-cm diameter cylinder tissue-equivalent phantom.

<sup>b</sup>Monoenergetic neutrons incident normally on a thirty (30)-cm diameter cylinder tissue-equivalent phantom.

(171) "Quarter" means a period of time equal to one-fourth (0.25) of the year observed by the licensee (approximately thirteen (13) consecutive weeks), providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

(172) "Rad" means the special unit of absorbed dose. One (1) rad equals an absorbed dose of 0.01 joule per kilogram (0.01 gray) or 100 ergs per gram.

(173) "Radiation" means ionizing radiation which includes the following: gamma rays, x-rays, alpha particles, beta particles, high speed electrons, neutrons, high-speed protons, and other atomic particles capable of producing ions. This definition shall not include non-ionizing radiations, such as sound, microwaves, radiowaves, or visible, infrared, or ultraviolet light.

(a) "Leakage radiation" means radiation coming from within the tube or source housing except the useful beam.

(b) "Scattered radiation" means radiation that, during passage through matter, has been deviated in direction. It may also have been modified by a decrease in energy.

(c) "Useful radiation" means radiation which passes through the window, aperture, cone, or other beam limiting device of the tube or source housing. Sometimes called "primary beam."

(d) "Stray radiation" means the sum of leakage and scattered radiation.

(174) "Radiation area" means an area, accessible to individuals, in which there exists radiation at levels that an individual may receive in excess of five (5) millirems (0.05 mSv) in one (1) hour at thirty (30) centimeters from the radiation source or from a surface that the radiation penetrates.

(175) "Radiation machine" means a device capable of producing radiation except devices which produce radiation only from radioactive material.

(176) "Radiation safety officer" means one who has the knowledge and responsibility to apply appropriate radiation protection administrative regulations.

(177) "Radiation therapy simulation system" means a fluoroscopic or radiographic x-ray system intended for localizing the volume to be exposed during radiation therapy and confirming the position and size of the therapeutic irradiation field.

(178) "Radioactive marker" means radioactive material placed subsurface or on a structure intended for subsurface use for the purpose of depth determination or direction orientation.

(179) "Radioactive material" means a solid, liquid, or gas, which emits radiation spontaneously.

(180) "Radioactivity" means the disintegration of unstable atomic nuclei by the emission of radiation.

(181) "Radiograph" means an image receptor on which the image is created directly or indirectly by an x-ray pattern and results in a permanent record.

(182) "Radiographer" means an individual who performs or who, in attendance at the site where sources of radiation are being used, personally supervises industrial radiographic operations and who is responsible to the licensee or registrant for assuring compliance with the requirements of these administrative regulations and license conditions.

(183) "Radiographer's assistant" means an individual who, under the personal supervision of a radiographer, uses sources of radiation, related handling tools, or survey instruments in industrial radiography.

(184) "Radiographer instructor" means a radiographer who has been authorized by the cabinet to provide on-the-job training to radiographer trainees under 902 KAR 100:100, Section 11(1).

(185) "Radiographer trainee" means an individual who, under the personal supervision of a radiographer instructor, uses sources of radiation, related handling tools, or radiation survey instruments during the course of instruction.

(186) "Radiographic exposure device" means an instrument containing a sealed source fastened or contained therein, in which the sealed source or shielding thereof may be moved, or otherwise changed, from a shielded to unshielded position for purposes of making a radiographic exposure.

(187) "Radiographic imaging system" means a system whereby a permanent or semipermanent image is recorded on an image receptor by the action of ionizing radiation.

(188) "Radiographic personnel" means a radiographer, radiographer instructor, or radiographer trainee.

(189) "Rating" means the operating limits as specified by the component manufacturer.

(190) "Recordable event" means the administration of:

(a) A radiopharmaceutical or radiation without a written directive if a written directive is required;

(b) A radiopharmaceutical or radiation if a written directive is required without daily recording of each administered radiopharmaceutical dosage or radiation dose in the appropriate record;

(c) A radiopharmaceutical dosage greater than thirty (30) microcuries of sodium iodide I-125 or I-131 if:

1. The administered dosage differs from the prescribed dosage by more than ten (10) percent of the prescribed dosage, and

2. The difference between the administered dosage and prescribed dosage exceeds fifteen (15) microcuries;

(d) A therapeutic radiopharmaceutical dosage, other than sodium iodide I-125 or I-131, if the administered dosage differs from the prescribed dosage by more than ten (10) percent of the prescribed dosage;

(e) A teletherapy radiation dose if the calculated weekly administered dose is fifteen (15) percent greater than the weekly prescribed dose; or

(f) A brachytherapy radiation dose if the calculated administered dose differs from the prescribed dose by more than ten (10) percent of the prescribed dose.

(191) "Recording" means producing a permanent form of an image resulting from x-ray photons.

(192) "Reference man" means a hypothetical aggregation of human physical and physiological characteristics arrived at by international consensus. These characteristics may be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base.

(193) "Registrant" means a person who is registered with the cabinet and is legally obligated to register with the cabinet under 902 KAR 100:110.

(194) "Registration" means registration with the cabinet under 902 KAR 100:110.

(195) "Regulations of the U.S. Department of Transportation" means the regulations in 49 CFR Parts 100-189.

(196) "Rem" means a special unit of quantities expressed as dose equivalent. The dose equivalent in rems is equal to the absorbed dose in rads multiplied by the quality factor (one (1) rem = 0.01 sievert).

(197) "Research and development" means:

(a) Theoretical analysis, exploration, or experimentation; or

(b) The extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. Research and development does not include the internal or external

administration of radiation or radioactive material to human beings.

(198) "Residential location" means an area where structures in which people lodge or live are located, and the grounds on which structures are located, such as houses, apartments, condominiums, and garages.

(199) "Respiratory protective device" means an apparatus used to reduce the individual's intake of airborne radioactive materials, such as a respirator.

(200) "Restricted area" means an area access to which is limited by the licensee or registrant for purposes of protection of individuals against undue risks from exposure to radiation and radioactive materials. A restricted area shall not include areas used as residential quarters, although a separate room or rooms in a residential building may be set apart as a restricted area.

(201) "Roentgen" means the special unit of exposure. One (1) roentgen (R) equals  $2.58 \times 10^{-4}$  coulombs per kilogram of air (see "Exposure").

(202) "Sanitary sewerage" means a system of public sewers for carrying off waste, water, and refuse, but excludes sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee.

(203) "Sealed source" means radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent leakage or escape of the radioactive material.

(204) "Secondary dose monitoring system" means a system which terminates irradiation upon failure of the primary system.

(205) "Secretary" means the Secretary of the Cabinet for Human Resources.

(206) "Shallow-dose equivalent (H<sub>s</sub>)", means the external exposure of the skin or an extremity, means the dose equivalent at a tissue depth of 0.007 centimeter (seven (7) mg/cm<sup>2</sup>) averaged over an area of one (1) square centimeter.

(207) "Shielded position" means the location within the radiographic exposure device or storage container which, by manufacturer's design, is the proper location for storage of the sealed source.

(208) "Shielded-room radiography" means industrial radiography conducted in a room shielded so that radiation levels at every location on the exterior meet the limitations specified in 902 KAR 100:019, Section 10.

(209) "Shutter" means a device attached to the tube housing assembly which can totally intercept the useful beam and which has a lead equivalency not less than that of the tube housing assembly.

(210) "Sievert" means:

(a) The International System (SI) unit of quantities expressed as dose equivalent. The dose equivalent in sieverts is equal to the absorbed dose in grays multiplied by the quality factor (1 Sv=100 rems).

(b) As used in this administrative regulation, the quality factors for converting absorbed dose to dose equivalent are shown in the table listed in subsection 164 of this section.

(211) "Site boundary" means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee.

(212) "Source" means the focal spot of the x-ray tube.

(213) "Source changer" means a device designed and used for replacement of sealed sources in radiographic exposure devices, including those source changers also used for transporting and storage of sealed sources.

(214) "Source holder" means a housing or assembly into which a radioactive source is placed for the purpose of facilitating the handling and use of the source.

(215) "Source image receptor distance (SID)" means the distance from the source to the center of the input surface of the image receptor.

(216) "Source material" means:

(a) Uranium or thorium, or a combination thereof, in a physical or chemical form; or

(b) Ores which contain by weight one-twentieth (1/20) of one (1) percent (0.05 percent) or more of:

1. Uranium;
2. Thorium; or
3. Combination thereof.

(c) Source material does not include special nuclear material.

(217) "Source of radiation" means a radioactive material or device or equipment emitting or capable of producing radiation.

(218) "Special form" means radioactive material which satisfies

the following conditions:

(a) It is a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(b) The piece or capsule has at least one (1) dimension not less than five (5) millimeters (0.197 inch); and

(c) It satisfies the test requirements specified by the U.S. Nuclear Regulatory Commission (NRC). A special form encapsulation designed under the NRC requirements in effect on June 30, 1983, and constructed prior to July 1, 1985, may continue to be used. A special form encapsulation designed or constructed after June 30, 1985 shall meet requirements of this definition applicable if it is designed or constructed.

(219) "Special nuclear material" means:

(a) Plutonium, uranium 233, uranium enriched in the isotope U-233 or in the isotope U-235, and other material which the Governor declares by order to be special nuclear material after the United States Nuclear Regulatory Commission, or successor thereto, has determined the material to be special nuclear material, but does not include source material; or

(b) Material artificially enriched by one (1) of the foregoing, but does not include source material.

(220) "Special nuclear material in quantities not sufficient to form a critical mass" means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235; U-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams; or a combination of them as specified by the following formula: for each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of these ratios for the different kinds of special nuclear material in combination shall not exceed one (1). For example, the following quantities in combination would not exceed the limitation and are within the formula:

$$\frac{175 \text{ (grams contained U-235)}}{350} +$$

$$\frac{50 \text{ (grams U-233)}}{200} + \frac{50 \text{ (grams Pu)}}{200} = 1$$

(221) "Special purpose x-ray system" means a radiographic x-ray system which, by design, is limited to radiographic examination of a specific anatomical region.

(222) "Specific activity" means the radioactivity of the radionuclide per unit mass of that nuclide. The specific activity of a material in which the radionuclide is essentially uniformly distributed is the radioactivity per unit mass of the material.

(223) "Spot check" means a procedure which is performed to assure that a previous calibration continues to be valid.

(224) "Spot film" means a radiograph which is made during a fluoroscopic examination to permanently record conditions which exist during that fluoroscopic procedure.

(225) "Spot-film device" means a device intended to transport or position a radiographic image receptor between the x-ray source and fluoroscopic image receptor. It includes a device intended to hold a cassette over the input end of an image intensifier for the purpose of making a radiograph.

(226) "SSD" means the distance between the source and the skin of the patient.

(227) "Stochastic effects" means health effects that occur randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose with threshold, such as hereditary effects and cancer incidence.

(228) "Storage" (waste storage) means the holding of waste for treatment or disposal for a period of twenty-four (24) hours or more.

(229) "Storage area" means a location, facility, or vehicle which is used to store, transport, or secure a radiographic exposure device, a storage container, or a sealed source if it is not in use and which is locked or has a physical barrier to prevent accidental exposure, tampering with, or unauthorized removal of the device, container, or source.

(230) "Storage container" means a device in which sealed sources are transported or stored.

(231) "Stray radiation" means the sum of leakage and scattered radiation.

(232) "Subsurface tracer study" means the release of a substance tagged with radioactive material for the purpose of tracing the movement or position of the tagged substance in the well-bore or adjacent formation.

(233) "Survey" means an evaluation of the radiological conditions and potential hazards [hazardous] incident to the production, use, transfer, release, disposal, or presence of sources of radiation. If appropriate, the evaluation shall include a minimum of a physical survey of the location of sources of radiation and measurements or calculations of levels of radiation or concentrations or quantities of radioactive material present.

(234) "Technique factors" means the conditions of operation. They are specified as follows:

(a) For capacitor energy storage equipment, peak tube potential in kV and quantity of charge in mAs.

(b) For field emission equipment rated for pulsed operation, peak tube potential in kV and number of x-ray pulses.

(c) For CT x-ray systems designed for pulsed operation, peak tube potential in kV, scan time in seconds, and either tube current in mA, x-ray pulse width in seconds, and the number of x-ray pulses per scan, or the product of tube current, x-ray pulse width, and the number of x-ray pulses in mAs;

(d) For CT x-ray systems not designed for pulsed operation, peak tube potential in kV, and either tube current in mA and scan time in seconds, or the product of tube current and exposure time in mAs and the scan time if the scan time and exposure time are equivalent; and

(e) For other equipment, peak tube potential in kV and tube current in mA and exposure time in seconds or the product of tube current and exposure time in mAs.

(235) "Teletherapy" means therapeutic irradiation in which the source of radiation is at a distance from the body.

(236) "Teletherapy physicist" means the individual identified as the teletherapy physicist on a cabinet license.

(237) "Temporary job site" means a location to which radioactive material has been dispatched to perform a job, operation, or study other than the location listed in a specific license or certificate of registration.

(238) "Termination of irradiation" means the stopping of irradiation in a fashion which does not permit continuance of irradiation without the resetting of operating conditions at the control panel.

(239) "Tests" means the process of verifying compliance with an applicable regulation.

(240) "Therapeutic-type protective tube housing" means:

(a) For x-ray therapy equipment not capable of operating at 500 kVp or above, the following definition applies: an x-ray tube housing so constructed that the leakage radiation at a distance of one (1) meter from the target does not exceed one (1) roentgen in one (1) hour if the tube is operated at its maximum rated tube potential;

(b) For x-ray therapy equipment capable of operating at 500 kVp or above, the following definition applies: an x-ray tube housing so constructed that the leakage radiation at a distance of one (1) meter from the target does not exceed one-tenth (0.1) percent of the useful beam exposure rate at one (1) meter from the target, for its operating conditions;

(c) Small areas of reduced protection are acceptable providing the average reading over a 100 square centimeter area at one (1) meter distance from the target does not exceed the values given above.

(241) "Tomogram" means the depiction of the x-ray attenuation properties of a section through the body.

(242) "Total effective dose equivalent (TEDE)" means the sum of the deep-dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).

(243) "Traceable to a national standard" means that a quantity or a measurement has been compared to a national standard directly or indirectly through one (1) or more intermediate steps and that comparisons have been documented.

(244) "Transport container" means a package that is designed to provide radiation safety and security if sealed sources are transported and which meets the requirements of the 49 CFR 173, Subpart I.

(245) "Transport index" means the dimensionless number

(rounded up to the first decimal place) placed on the label of a package to designate the degree of control to be exercised by the carrier during transportation. The transport index is the number expressing the maximum radiation level in millirem per hour at one (1) meter from the external surface of the package.

(246) "Treatment" (waste treatment) means a method, technique, or process, including storage for radioactive decay, designed to change the physical, chemical, or biological characteristics or composition of a waste in order to render the waste for transport, storage or disposal, amendable to recovery, convertible to another usable material, or reduced in volume.

(247) "Tube" means an x-ray tube, unless otherwise specified.

(248) "Tube housing assembly" means the tube housing with tube installed. It includes high-voltage or filament transformers and other appropriate elements if they are contained within the tube housing.

(249) "Tube rating chart" means the set of curves which specify the rated limits of operation of the tube in terms of the technique factors.

(250) "Type A quantity" means a quantity of radioactive material, the aggregate radioactivity of which does not exceed  $A_1$  for special form radioactive material or  $A_2$  for normal form radioactive material, where  $A_1$  and  $A_2$  are given in 902 KAR 100:070, Section 21, or may be determined by procedures described in 902 KAR 100:070, Section 20.

(251) "Type B package" means a Type B packaging together with its radioactive contents. A Type B package design is designated as B(U) or B(M). B(U) refers to the need for unilateral approval of international shipments; B(M) refers to the need for multilateral approval. There is no distinction made in how packages with these designations may be used in domestic transportation. To determine their distinction for international transportation, refer to U.S. Department of Transportation regulations in 49 CFR Part 173. A Type B package approved prior to September 6, 1983, was designated only as Type B. Limitations on its use are specified in 902 KAR 100:070, Section 7.

(252) "Type B packaging" means a packaging designed to retain the integrity of containment and shielding required by U.S. Nuclear Regulatory Commission regulations if subjected to the normal conditions of transport and hypothetical accident test conditions set forth in 10 CFR Part 71.

(253) "Type B quantity" means a quantity of radioactive material greater than a Type A quantity.

(254) "U.S. Department of Energy" means the Department of Energy established by 42 USC 7101 et seq., to the extent that the department exercises functions formerly vested in the U.S. Atomic Energy Commission, its chairman, members, officers and components and transferred to the U.S. Energy Research and Development Administration and to the Administrator thereof and retransferred to the Secretary of Energy in 42 USC 7151, effective October 1, 1977.

(255) "Unrefined and unprocessed ore" means ore in its natural form prior to processing, such as grinding, roasting, beneficiating, or refining.

(256) "Unrestricted area" means an area access to which is not controlled or limited by the licensee or registrant for purposes of protection of individuals from exposure to radiation and radioactive material[~~and areas used for residential quarters~~].

(257) "Uranium fuel cycle" means the operations of milling of uranium ore, chemical conversion of uranium, isotopic enrichment of uranium, fabrication of uranium fuel, generation of electricity by a light-water-cooled nuclear power plant using uranium fuel, and reprocessing of spent uranium fuel to the extent that these activities directly support the production of electrical power for public use. Uranium fuel cycle shall not include mining operations, operations at waste disposal sites, transportation of radioactive material in support of these operations, and the reuse of recovered nonuranium special nuclear and byproduct materials from the cycle.

(258) "Useful beam" means the radiation which passes through the tube housing port and the aperture of the beam limiting device if the exposure switch or timer is activated.

~~[(254) "Uranium fuel cycle" means the operations of milling of uranium ore, chemical conversion of uranium, isotopic enrichment of uranium, fabrication of uranium fuel, generation of electricity by a light-water-cooled nuclear power plant using uranium fuel, and reprocessing of spent uranium fuel to the extent that these activities directly support the production of electrical power for public use. Uranium fuel cycle shall not include mining operations, operations at waste disposal~~

sites, transportation of radioactive material in support of these operations, and the reuse of recovered nonuranium special nuclear and byproduct materials from the cycle.]

(259) "User" means an individual who personally utilizes or manipulates a source of radiation.

(260) "Variable-aperture beam limiting device" means a beam limiting device which has capacity for stepless adjustment of the x-ray field size at a given SID.

(261) "Vendor" means for the purposes of 902 KAR 100:110 a person who sells for profit radiation producing machines or accelerators registerable with the cabinet as specified by 902 KAR 100:110.

(262) "Vendor registrant" means a vendor who is registered with the cabinet.

(263) "Vendor registration" means registration of a vendor with the cabinet described by 902 KAR 100:110.

[(259) "Vendor registrant" means a vendor who is registered with the cabinet.]

(264) "Very high radiation area" means an area, accessible to individuals, in which radiation levels may result in an individual receiving an absorbed dose in excess of 500 rads (five (5) grays) in one (1) hour at one (1) meter from a radiation source or from a surface that the radiation penetrates. At very high doses received at high dose rates, units of absorbed dose (such as rads and grays) are appropriate, rather than units of dose equivalent (such as rems and sieverts).

(265) "Visible area" means that portion of the input surface of the image receptor over which incident x-ray photons are producing a visible image.

(266) "Visiting authorized nuclear pharmacist" means a nuclear pharmacist who is not identified on the license of the licensee being visited.

(267) "Visiting authorized user" means an authorized user who is not identified on the license of the licensee being visited.

(268) "Waste" (see "low-level radioactive waste").

(269) "Wedge filter" means an added filter effecting continuous progressive attenuation on the useful beam or a part thereof.

(270) "Week" means seven (7) consecutive days starting on Sunday.

(271) "Weighting [Weighing] factor ( $W_T$ )", for an organ or tissue (T) means the proportion of the risk of stochastic effects resulting from irradiation of that organ or tissue to the total risk of stochastic effects if the whole body is irradiated uniformly. For calculating the effective dose equivalent, the values of ( $W_T$ ) are:

#### Organ Dose **Weighting [Weighing]** Factors

Organ or tissue	$W_T$ [F]
Gonads	0.25
Breast	0.15
Red bone marrow	0.12
Lung	0.12
Thyroid	0.03
Bone surfaces	0.03
Remainder	<sup>1</sup> 0.30
Whole Body	<sup>2</sup> 1.00

<sup>1</sup>0.30 results from 0.06 for each of five (5) "remainder" organs (excluding the skin and the lens of the eye) that receive the highest doses.

<sup>2</sup>For the purpose of **weighting [weighing]** the external whole body dose (for adding it to the internal dose), a single **weighting [weighing]** factor,  $W_T=1.0$ , has been specified. The use of other **weighting [weighing]** factors for external exposure will be approved on a case-by-case basis until a time as specific guidance is issued.

(272) "Well-bore" means a drilled hole in which wire line service operations and subsurface tracer studies are performed.

(273) "Well-logging" means the lowering and raising of measuring devices or tools which may contain sources of radiation in well-bores or cavities for the purpose of obtaining information about the well or adjacent formations.

(274) "Whole body" means, for purposes of external exposure, head, trunk (including male gonads), arms above the elbow, or legs above the knee.

(275) "Wire line" means a cable containing one (1) or more electrical conductors which is used to lower and raise logging tools in the well-bore.

(276) "Wire line service operation" means an evaluation or mechanical service which is performed in the well-bore using devices on a wire line.

(277) "Worker" means an individual engaged in activities licensed or registered by the cabinet and controlled by a licensee or registrant, but does not include the licensee or registrant.

(278) "Working level (WL)" means a combination of short-lived radon daughters (for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon-220: polonium-216, lead-212, bismuth-212, and polonium-212) in one (1) liter of air that results in the ultimate emission of  $1.3 \times 10^5$  MeV of potential alpha particle energy.

(279) "Working level month (WLM)" means an exposure to one (1) working level for 170 hours (2,000 working hours per year/twelve (12) months per year = approximately 170 hours per month).

(280) "Written directive" means an order in writing for a specific patient or human research subject, dated and signed by an authorized user prior to the administration of a radiopharmaceutical or radiation, except as specified in paragraph (f) of this subsection, and containing the following information:

(a) For an administration of quantities greater than thirty (30) microcuries of sodium iodide I-125 or I-131: the dosage;

(b) For a therapeutic administration of a radiopharmaceutical other than sodium iodide I-125 or I-131: the radiopharmaceutical, dosage, and route of administration;

(c) For gamma stereotactic radiosurgery: target coordinates, collimator size, plug pattern, and total dose;

(d) For teletherapy: the total dose, dose per fraction, treatment site, and overall treatment period;

(e) For high-dose-rate remote afterloading brachytherapy: the radioisotope, treatment site, and total dose; or

(f) For all other brachytherapy:

1. Prior to implementation: the radioisotope, number of sources, and source strengths; and

2. After implantation, but prior to completion of the procedure: the radioisotope, treatment site, and total source strength and exposure time (or, equivalently, the total dose).

(281) "X-ray control" means a device which controls input power to the x-ray high-voltage generator or the x-ray tube. It includes timers, phototimers, automatic brightness stabilizers, and similar devices which control the technique factors of an x-ray exposure.

(282) "X-ray equipment" means an x-ray system, subsystem, or component thereof. X-ray equipment may be used as:

(a) "Mobile" means x-ray equipment mounted on a permanent base with wheels or casters for moving while completely assembled.

(b) "Portable" means x-ray equipment designed to be hand-carried.

(c) "Stationary" means x-ray equipment which is installed in a fixed location.

(d) "Transportable" means x-ray equipment installed in a vehicle or trailer.

(283) "X-ray field" means that area of the intersection of the useful beam and one (1) of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the exposure rate is one-fourth (1/4) of the maximum in the intersection.

(284) "X-ray high-voltage generator" means a device which transforms electrical energy from the potential supplied by the x-ray control to the tube operating potential. The device may also include means for transforming alternating current to direct current, filament transformers for the x-ray tube, high-voltage switches, electrical protective devices, and other appropriate elements.

(285) "X-ray subsystem" means a combination of two (2) or more components of an x-ray system.

(286) "X-ray system" means an assemblage of components for the controlled production of x-rays. It includes minimally an x-ray high-voltage generator, an x-ray control, a tube housing assembly, a beam-limiting device, and the necessary supporting structures. Additional components which function with the system are considered integral parts of the system.

[(281) "X-ray system" means an assemblage of components for the controlled production of x-rays, such as an x-ray high-voltage gen-



erator, an x-ray control, a tube housing assembly, a beam-limiting device and the necessary supporting structures. Additional components which function with the system shall be considered integral parts of the system.]

(287) "X-ray tube" means an electron tube which is designed to be used primarily for the production of x-rays.

(288) "Year" means the period of time beginning in January used to determine compliance with the provisions of 902 KAR Chapter 100. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided the change is made at the beginning of the year and that no day is omitted or duplicated in consecutive years.

RICE C. LEACH, M.D., Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: May 5, 1998

FILED WITH LRC: May 13, 1998 at 9 a.m.

**CABINET FOR HEALTH SERVICES**  
**Department for Mental Health and**  
**Mental Retardation Services**  
**Division of Mental Retardation**  
**(As Amended at ARRS, July 14, 1998)**

**908 KAR 2:190. Supported living services.**

RELATES TO: KRS 210.770 through 210.795

STATUTORY AUTHORITY: KRS 210.780(5) [~~210.770 through 210.795~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 210.780(5) authorizes the State Supported Living Council to recommend necessary administrative regulations to carry out the purposes of KRS 210.770 to 210.795. This administrative regulation establishes the duties of the supported living councils, the procedure for obtaining supported living services, and the appellate procedure for an application denial. [~~The Department for Mental Health and Mental Retardation Services is promulgating administrative regulations pursuant to KRS 210.795 that shall enable provisions of KRS 210.770 to 210.795 concerning supported living services to be implemented.~~]

Section 1. Definitions. (1) "Adaptive and therapeutic equipment" means an item [items] recommended by a physician, or therapist which promotes [promote] the recipient's independent functioning and communication.

(2) "Applicant" means a person who is eligible for supported living funds and submits a completed application to the regional supported living coordinator employed by the mental health and [~~and~~] mental retardation board located in the region where the applicant resides by the deadline established in the application.

(3) "Application" means a written request for supported living services which must be completed and submitted in accordance with Section 4 of this administrative regulation to the regional supported living coordinator.

(4) "Eligibility for services" means as stated at KRS 210.790(1).

(5) "Home modifications" means an architectural change, ramp [architectural changes, ramps], widening of doors, or other adaption [adaptations] which need to be made to the recipient's place of residence to accommodate that person's disability.

(6) "Homemaker services" means cooking, cleaning, shopping, laundry housekeeping and practical assistance in maintaining the recipient's household.

(7) "Impairment" means as stated at KRS 210.770(1) and (3).

(8) "Nominating organization" means one (1) of the organizations specified in KRS 210.775.

(9) "Personal care services" means assistance with feeding, bathing, dressing, transferring, turning, repositioning, activities of daily living, and if necessary, ambulation and emergency procedures.

(10) "Recipient" means a person who has applied and been approved for supported living funds by a Regional Supported Living Council.

(11) "Regional supported living coordinator" means a person who

is responsible for fiscal and programmatic oversight of supported living funds and plans.

(12) "Regional Supported Living Council" means as stated at KRS 210.770(9) and 210.785.

(13) "Request for reconsideration" means the process to be followed if [when] a recipient disagrees with a decision made by the regional supported living coordinator or council regarding a request for a supported living plan amendment.

(14) "Start-up grants" means an award of funds to a recipient for one (1) time expenses limited to a security deposit, down payment not to exceed ten (10) percent of the purchase price, closing costs for a home, purchase of furniture or equipment.

(15) "State Supported Living Council" means as stated at KRS 210.770(7) and 210.775.

(16) "Substantial limitation of a major life activity" means as stated at KRS 210.770(4).

(17) "Supported living" means as stated at KRS 210.770(5) and (6).

(18) "Supported living community resource developer" means a person who coordinates and assists a recipient to develop friendships, opportunities, networks, in the community on an individualized basis.

(19) "Supported living grant" means an award of funds other than start-up grants by a Regional Supported Living Council to an applicant.

(20) "Supported living plan" means the document developed between the regional supported living coordinator and the recipient to account for the services to be provided and funds awarded as a supported living grant.

(21) "Supported living plan amendment" means a written, documented change in a supported living plan in the same fiscal year.

(22) "Transportation" means a service or mileage reimbursement for a person who transports the recipient to work or community activities.

Section 2. State Supported Living Council Operating Procedures.

(1) A State Supported Living Council member [members] shall:

(a) Adhere to the bylaws. If a member fails to act in accordance with the bylaws, the chair of the State Supported Living Council shall recommend the dismissal of that member to the governor. [Failure to act in accordance with the bylaws shall result in a request by the chairperson of the State Supported Living Council to recommend to the Governor the dismissal from the State Supported Living Council.]

(b) Adhere to applicable laws and regulations concerning confidentiality.

(2) A State Supported Living Council member shall not:

(a) Influence, discuss, deliberate, or vote on a decision if the member has a conflict of interest that is:

1. Personal;
2. Professional; or
3. Financial;

(b) Be physically present in a meeting in which the matter is discussed or voted on;

(c) Assist another individual, regardless of where the person resides, complete an application for supported living services, except as provided in subsection (3) of this section.

[(c) Neither influence, discuss, deliberate nor vote on decisions where the member has a personal, professional or financial interest of conflict and shall not be physically present in the meeting when such matters are discussed or voted upon.]

(d) In no way assist another individual, regardless of where the person resides, to complete an application for supported living services except as provided in subsection (2) of this section.]

(3) A [(2)] State Supported Living Council member [members] may assist in the completion of an application for supported living services for himself, if eligible, or an eligible family member.

Section 3. Regional Supported Living Council Operating Procedures. (1) A Regional Supported Living Council member shall:

(a) Adhere to the bylaws. If a member fails to act in accordance with the bylaws, the Chair of the Regional Support Living Council shall recommend the dismissal of that member to the State Supported Living Council;

(b) Adhere to applicable laws and administrative regula-

tions concerning confidentiality; and

(c) Comply with the evaluation criteria as established by the State Supported Living Council and the Department for Mental Health and Mental Retardation Services for a given fiscal year; and

(d) Accord every recipient and applicant the same opportunity for personal interaction with the council.

(2) A Regional Supported Living Council member shall not:

(a) Influence, discuss, deliberate, or vote on a decision if the member has a conflict of interest that is:

1. Personal;
2. Professional; or
3. Financial;

(b) Be physically present in a meeting in which the matter is discussed or voted on;

(c) Assist another individual, regardless of where the person resides, complete an application for supported living services, except as provided in subsection (3) of this section. [Regional Supported Living Council members shall:

(a) Adhere to the bylaws. Failure to act in accordance with the bylaws shall result in a request by the chairperson of the Regional Supported Living Council to recommend to the State Supported Living Council for dismissal from the Regional Supported Living Council.

(b) Adhere to applicable laws and regulations concerning confidentiality.

(c) Neither influence, discuss, deliberate nor vote on decisions where the member has a personal, professional or financial interest of conflict and shall not be physically present in the meeting when such matters are discussed or voted upon.

(d) In no way assist another individual, regardless of where the person resides, to complete an application for supported living services except as provided in Section 3(2) of this administrative regulation.

(e) Comply with the evaluation criteria [application review process] as established by the State Supported Living Council and the Department for Mental Health and Mental Retardation Services for a given fiscal year.

(f) Accord all recipients the same opportunity for personal interaction with the council.

(g) Accord all applicants the same opportunity for personal interaction with the council.]

(3) A [(2)] Regional Supported Living Council member [members] may assist in the completion of an application for supported living services for himself, if eligible, or an eligible family member.

Section 4. Applicant Responsibilities. (1) The applicant shall submit a completed application to the regional supported living coordinator where the applicant wishes to reside. The application shall specify:

- (a) Name;
- (b) Address;
- (c) Telephone number;
- (d) Social Security number;
- (e) Disability;
- (f) Type of service or support [services or supports] requested;
- (g) Proposed budget.

(2) A supported living grant [Supported living grants] shall not be used for:

- (a) On-going rent or mortgage payments.
- (b) Payment of a medical insurance premium [medical insurance premiums] or unpaid medical bill [bills].
- (c) Supplementation of wages for staff in other publicly-funded programs.
- (d) Modifications costing over \$2,500 to rental property.
- (e) A home improvement [Home improvements] not related to a person's disability.
- (f) Rental of a vehicle for more than thirty (30) days in a fiscal year.
- (g) Purchase of a vehicle.
- (h) Living arrangements that include more than three (3) people who are eligible for supported living unless all are related legally or biologically as a family unit.
- (i) Equipment or service which is obtainable from another program for which the applicant qualifies.
- (j) Tuition or fees for a program or activity lasting [to programs

or activities for] more than thirty (30) days if during that fiscal year a majority of participants are eligible to apply for supported living. [in a fiscal year where the majority of the participants are eligible to apply for supported living.]

Section 5. Application Evaluation Criteria. The following criteria shall be used by the Regional Supported Living Council to award a supported living grant:

(1) Eligibility.

(a) An applicant shall be disabled and:

1. Be a resident of Kentucky; or
2. Have family or a guardian who is a resident of Kentucky;

(b) An applicant may be living:

1. With a family member; or
2. Independently;

(2) Adherence to principles of supported living shall be weighed at thirty-six (36) percent of the total score in the decision to award a grant. The following shall be taken into consideration:

(a) Whether the services have been designed around the specific needs of the individual;

(b) Whether the person will be able to exercised choice and autonomy in the supported living arrangement;

(c) The name by which the housing arrangement will be made;

(d) Whether there will be people, in addition to the individual and paid staff, who are committed to supporting the arrangement over time; and

(e) Whether the quality of life for the person with a disability will be improved, if the grant is funded.

(3) Potential for success shall be weighed at twenty-four (24) percent of the total score in the decision to award a grant. The following shall be taken into consideration:

(a) Whether the applicant has clearly indicated the reason for requesting funds and what he will do if granted the funds;

(b) Whether the applicant has identified a place to live; and

(c) Whether there are additional resources available to the person, including:

1. Family;
2. A friend; or
3. Another service provider who can support the situation.

(4) Need shall be weighed at eighteen (18) percent of the total score in the decision to award a grant. The following shall be taken into consideration:

(a) Whether the application shows that the person is planning ahead for his future;

(b) Whether the applicant or his family is experiencing a crisis situation; and

(c) Whether the applicant's multiple disabilities create barriers to developing and sustaining supports over time.

(5) Accountability shall be weighed at twelve (12) percent of the total score in the decision to award a grant. The following shall be taken into consideration:

(a) Whether the applicant has a viable service provider;

(b) Whether the applicant's family seems capable of managing the resources and arranging for the requested services;

(c) Whether the applicant has demonstrated a reasonable effort to secure funds from other sources if appropriate; and

(d) Whether the request is reasonable.

(6) Overall quality of the application shall be weighed at ten (10) percent of the total score in the decision so award a grant. The following shall be taken into consideration:

(a) Whether the supported living resources will be used to promote a positive quality of life for the disabled person; and

(b) Whether the supported living resources will simply maintain the isolation and dependency of the person and his family.

Section 6. Recipient Responsibilities. (1) A recipient [Recipients] of a supported living grant [grants] shall:

(a) Participate in the development of a supported living plan in coordination with the supported living coordinator.

(b) Adhere to the supported living plan and request a plan amendment for a desired change [desired changes].

(c) Negotiate the services to be provided by:

1. A service providing agency; or

2. An individual who provides services, as employee or independent contractor. [with any service providing agency or any individual who provides services, either as an employee or independent contractor, about what services shall be provided.]

(2) A recipient of a supported living grant who is an employer [Recipients of supported living grants who are employers] shall:

(a) Be responsible for the computation of required employee payroll, withholdings, workers' compensation, unemployment and actual payment of required withholdings, taxes and disbursements appropriate to being an employer.

(b) Establish terms of employment for an [any] employee, to include time, duties and responsibilities. This shall be in the form of a signed agreement between the recipient and the employee.

(c) Establish terms for an [any] independent contract to include services to be provided and compensation. This shall be in the form of a signed agreement between the recipient and the independent contractor.

(d) Not sell equipment or another item [Neither sell equipment nor other items] purchased with supported living funds without written consent of regional council.

(e) Comply with standards as set forth in KRS 210.795.

Section 7. [6:] Termination of a Supported Living Grant. A supported living grant shall be terminated if the recipient: [Termination of a supported living grant shall occur for the following reasons if:]

(1) [Recipient] Does not use the funds in accordance with the principles of supported living.

(2) [Recipient] Does not comply with employer responsibilities if applicable.

(3) [Recipient] Takes up residence outside of Kentucky.

(4) [Recipient] Requests termination of the supported living grant.

(5) [Recipient] Dies.

Section 8. [7:] Reconsideration Process for Supported Living Plan or Plan Amendments. (1) A recipient who disagrees [Recipients who disagree] with a decision by the regional supported living coordinator or Regional Supported Living Council regarding a supported living plan or plan amendment may request reconsideration, in writing, or alternative format within thirty (30) days following the notification by the regional supported living coordinator of the Regional Supported Living Council's decision.

(2) A request for reconsideration shall:

(a) [contain the following information and shall] Be submitted to the regional supported living coordinator for review by the Regional Supported Living Council; and

(b) Contain the following information:

1. [(a)] Name.

2. [(b)] Address.

3. [(c)] Telephone number.

4. A decision [(d) Decision(s)] to be reconsidered.

5. A reason for a [(e) Reason(s) for] decision to be reconsidered.

6. [(f)] Documentation supporting request for reconsideration.

7. [(g)] Signature of person requesting reconsideration.

(3) The request for reconsideration, and supporting documentation, shall be reviewed by the Regional Supported Living Council. The council shall issue a written or alternative format response to the recipient no later than seven (7) working days after a decision has been made.

(4) The recipient may request a reconsideration by the State Supported Living Council if the Regional Supported Living Council's decision does not satisfy their request concerning a supported living plan or plan amendment.

(a) A request for reconsideration shall:

1. [contain the following information and shall] Be submitted to the regional supported living coordinator for review by the State Supported Living Council; and

2. Contain the same information required in subsection (2)(b) of this section. [:

1. Name:

2. Address:

3. Telephone number.

4. Decision(s) to be reconsidered.

5. Reason(s) for decision to be reconsidered.

6. Documentation supporting request for reconsideration.

7. Signature of person requesting reconsideration.]

(b) The request for reconsideration and supporting documentation shall be reviewed by the State Supported Living Council.

(c) [4:] The reconsideration shall include:

1. Three (3) members of the State Supported Living Council; one

(1) of whom shall be the chairman or their designee;

2. [The reconsideration shall include] The recipient or his designee;

3. [The reconsideration shall include] Two (2) members of the Regional Supported Living Council, one (1) of whom shall be the chairman or their designee.

(d) [4:] The State Supported Living Council shall issue a written response to the recipient and the Regional Supported Living Council shall be notified of the decision and an explanation for the decision within thirty (30) days.

(5) [The recipient may request an administrative hearing if the State Supported Living Council's decision does not satisfy their request concerning a supported living plan or plan amendment.]

(6) If a recipient disagrees with the determination made by the State Supported Living Council, the recipient may request an administrative hearing. The request shall be submitted no later than thirty (30) days after the receipt of the decision of the State Supported Living Council.

Section 9. [8:] Nonfunded Supported Living Applications. (1) A person applying for supported living services who has not been funded may appeal the decision based upon the Regional Supported Living Council failing to comply with Section 3(1)(c) through (g) of this administrative regulation. [Persons applying for supported living services who have not been funded may appeal based only on evidence that the procedures referenced to in Section 3(1)(c), (d), (e), (f), and (g) of this administrative regulation were not followed.]

(2) An administrative hearing shall [must] be requested no later than thirty (30) days after notification that the application was not funded.

Section 10. [9:] Request for Administrative Hearing. (1) The following persons may request an administrative hearing within thirty (30) days of receipt of notification:

(a) A recipient of services who disagrees with the determination for reconsideration made by the State Supported Living Council; and

(b) A person who did not receive funding based on the criteria in Section 8 of this administrative regulation.

(2) The recipient of supported living services or a person who application was not funded shall:

(a) Submit a written request for an administrative hearing to the Commissioner of the Department for Mental Health and Mental Retardation Services, 100 Fair Oaks Lane, 4E-E, Frankfort, Kentucky 40621; and

(b) Include with the request the same information required in Section 7(2)(b) of this administrative regulation. [Recipients of services disagreeing with determinations for reconsideration made by the State Supported Living Council and persons who did not receive funding based on criteria in Section 8 of this administrative regulation may request an administrative hearing. The request shall be submitted within thirty (30) days of receipt of notification. [The recipient may request an administrative hearing if the State Supported Living Council's decision does not satisfy their request concerning a supported living plan or plan amendment.]

(2) [If a recipient disagrees with the determination made by the State Supported Living Council, the recipient may request an administrative hearing. The request shall be submitted no later than thirty (30) days after the receipt of the decision of the State Supported Living Council.]

(3) The recipient of supported living services or the person whose application was not funded shall submit a written request for an administrative hearing to the Commissioner of the Department for Mental Health and Mental Retardation Services, 100 Fair Oaks Lane, 4E-E [275 East Main Street], Frankfort, Kentucky 40621 containing the following information:

- (a) Name;
- (b) Address;
- (c) Telephone number;
- (d) Decision(s) to be reconsidered;
- (e) The reason(s) the recipient disagrees with the council's decision;
- (f) Documentation supporting the recipient's disagreement;
- (g) Signature of person requesting reconsideration;
- (3) [(4)] The administrative hearing process shall be in accordance with KRS Chapter 13B.

Section 11. ~~[(10)]~~ [9:] Regional Supported Living Coordinator Responsibilities. The regional supported living coordinator shall:

- (1) Provide support to the regional council, including:
  - (a) ~~[(to include)]~~ Making meeting arrangements;
  - (b) ~~[(for meetings;)]~~ Sending notices and agendas to members;
  - (c) Providing budgetary information to members for funding decisions;
  - (d) Arranging member expense reimbursement; and
  - (e) Maintaining:
    - 1. A financial account of expenditures; and
    - 2. Minutes from the meetings. ~~[(for them to make decisions on funding, maintaining a financial account of expenditures, maintaining minutes from meetings and arranging for reimbursement for members' expenses;)]~~

(2) Disseminate applications for supported living which include the evaluation criteria by which the applications shall be reviewed.

(3) Provide assistance in the completion of supported living applications upon request by an eligible applicant or individual on the applicant's behalf.

(4) Receive supported living applications, document date received, send notice of receipt of application, and maintain a database of funded applicants.

(5) Maintain a database of unfunded applicants to include:

- (a) Name;
- (b) Address;
- (c) Phone number;
- (d) County;
- (e) Service ~~[(services)]~~ requested; and
- (f) Amount of funding requested.

(6) Prescreen applications to determine completeness, compliance with the instructions, and conformity with KRS 210.770(5) and (6).

(7) Upon recommendation for funding by the regional council, meet with the recipient to finalize a supported living plan within thirty (30) days of the recommendation for funding.

(8) Provide information concerning recordkeeping, taxes, worker's compensation and unemployment insurance responsibilities the recipient has related to the supported living plan.

(9) Maintain supported living plans which are currently funded, including:

- (a) The receipt of bills;
- (b) Checking against the plan;
- (c) Approving for payment; and
- (d) Keeping a record of payment.

(10) Arrange for billing and payment directly to a vendor for one (1) time expenditures and follow-up either by visit or telephone, within ninety (90) days, to determine if the vendor delivered the service or equipment.

(11) Attend trainings and meetings for regional supported living coordinators.

(12) Submit quarterly reports to the Division of Mental Retardation Services regarding expenditures and activities.

(13) Contact the appropriate nominating agency as governed by KRS 210.775(2)(b) and 210.785 to notify it ~~[(them)]~~ of the need for a nomination ~~[(nomination(s))]~~ to replace an individual on the Regional Supported Living Council.

Section 12. ~~[(11)]~~ [(10)] Contract Agency Responsibilities. The contract agency for supported living funds shall:

(1) Implement the supported living program in accordance with KRS 210.770.

(2) Assume fiscal accountability for the state funds designated for the program.

(3) Provide necessary administrative support personnel within the contract agency office.

(4) Provide liability insurance for the Regional Supported Living Council.

(5) Establish a cost center and record staff costs for working with the regional council, applicants, recipients and administrative duties.

(6) Establish a budget with the Regional Supported Living Council for council expenses on a fiscal year basis.

(7) Maintain files and records, including:

- (a) Applications;
- (b) Recipient plans; and
- (c) Quarterly reports.

Section 13. ~~[(12)]~~ [(11)] Department for Mental Health and ~~[(Mental Retardation Services Responsibilities. The Department for Mental Health and)]~~ [(Mental Retardation Services shall:)]

(1) With the State Supported Living Council, establish deadlines, budgets and priorities for supported living funds.

(2) Maintain aggregate financial and programmatic data.

(3) Advocate for program expansion.

(4) Provide technical assistance and training for the supported living program.

(5) Regularly inform the nominating organizations per KRS 210.775(2)(b) and 210.785 of their responsibility to solicit nominations for both the State and Regional Supported Living Councils.

Section 14. ~~[(13)]~~ [(12)] Nominating Organizations' Responsibilities. Nominating organizations shall:

(1) Solicit nominations of qualified nominees per their designated category to serve on both the State and Regional Supported Living Councils in accordance with KRS 210.775.

(2) Submit the biography form to the Director, Division of Mental Retardation Services, 100 Fair Oaks Lane, 4E-E [275 East Main Street], Frankfort, Kentucky 40621.

Section 15. Incorporation ~~[(14. Material Incorporated)]~~ by Reference. (1) "Kentucky Supported Living Application", (1/96 Edition), Department for Mental Health and Mental Retardation Services, is ~~[(necessary for the implementation of the supported living program shall be herein)]~~ incorporated by reference.

(2) It ~~[(Material incorporated by reference)]~~ may be inspected, ~~[(and)]~~ copied, or obtained at the Department for Mental Health and Mental Retardation Services, Division of Mental Retardation Services, 100 Fair Oaks Lane, 4E-E, Frankfort, Kentucky 40621, Monday through Friday, [between the hours of] 8 a.m. through 4:30 p.m. [eastern time, Monday through Friday.]

ELIZABETH REHM WACHTEL, Commissioner

JOHN H. MORSE, Secretary

M. DEEP, Attorney

APPROVED BY AGENCY: May 7, 1998

FILED WITH LRC: May 7, 1998 at noon

ADMINISTRATIVE REGULATIONS REVIEWED AFTER PUBLIC HEARING  
OR RECEIPT OF WRITTEN COMMENTS

TRANSPORTATION CABINET  
(Amended After Hearing)

600 KAR 6:080. Financial records and audits of firms.

RELATES TO: KRS 45A.800 through 45A.835, 23 CFR 172, 48 CFR 30, 31, 49 CFR 18, 23 USC

STATUTORY AUTHORITY: KRS 45A.807(2) [~~13A.100(4); 45A.800 through 45A.835, 23 CFR 172, 48 CFR, 49 CFR 18, 23 USC~~]

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation sets forth audit methodology [the procedure] to be used by the Transportation Cabinet auditors for [when auditing professional] engineering or related service agreements entered into by the Transportation Cabinet pursuant to [services providers while implementing] the provisions of KRS 45A.800 to 45A.835. This administrative regulation [it further] sets the criteria for [standards] firms [are] to follow in the keeping of their financial records. All engineering and related projects which are funded with U.S. Department of Transportation funds are subject to the cost principles or [required to use the audit and] accounting standards set forth in 48 CFR 30 and 31. For consistency, these federal regulations [Because an engineering or related services firm may have both a federally funded and state-only funded project, these federal regulations] are imposed on all firms contracting with or prequalified by the Transportation Cabinet.

Section 1. Financial Records of Firms. (1) A firm which has requested prequalification, [or which] has been prequalified, is under contract, or has been selected to provide professional engineering or related services to the Transportation Cabinet, shall maintain and allow the cabinet access to:

(a) All financial or other information necessary to determine or verify the firm's direct wage rates, indirect cost rates, overhead, and direct project charges [which are not included in overhead rates];

(b) All other information necessary to verify the firm's application for prequalification or renewal of prequalification; and

(c) Payroll.

(2)(a) A firm shall maintain all financial records including [:

(2)(a) A prequalified firm shall maintain all financial records including payroll time records for all employees, including the firm's principals, in accordance with 48 CFR Part 31 [in accordance with 48 CFR Part 31].

(b) The financial records of a firm shall be retained and made available to the Transportation Cabinet until after the next audit performed by the Transportation Cabinet or for five (5) years, whichever occurs first.

[(2) [(b)] A specific incurred cost or expense shall [not] be considered either [both] a direct cost or an [and] indirect cost.]

(3) If [When] a firm is notified by the Transportation Cabinet of a pending [on-site] audit, the auditor may request that some portions of the needed information be mailed to him in advance of the audit date. For the audit, the firm shall provide [collect] the following information to the auditor when he arrives; [to be given to the auditor when he arrives on-site. The auditor may request that a portion of the information which can be readily and easily reproduced be mailed to him prior to arriving on-site.]

(a) Chart of accounts;

(b) The latest fiscal or calendar year financial statement of the firm. If one is available which was compiled, reviewed, or audited by an independent CPA, it shall also be made available to the auditor;

(c) Income tax returns for the audit year;

(d) Statement of company policies to include but not be limited to personnel policies, personal leave time, vacation time, sick leave, overtime, pay raise, travel, subsistence reimbursement, bonuses, employment, or retirement plans;

(e) For the audit period a breakdown of the total project fees from all contracts by indirect and direct cost, including a detailed listing of the direct costs; [Copy of a current proposal for a project, if available;]

(f) General ledger;

(g) Cash disbursements and accounts payable journals;

(h) [~~Copies of~~] All leases to include but not be limited to leases on office space, buildings, machinery, copiers, and motor vehicles;

(i) Schedule of current personnel by classification;

(j) Most current payroll register;

(k) All [~~Quarterly~~] federal, state, and local payroll tax forms;

(l) Billing statements;

(m) List of bonuses to individual employees and the date paid;

(n) [~~Copy of~~] The pension or retirement plan of the firm and the contributions made on behalf of each employee;

(o) List of officers and principals of the company which includes their salaries and other compensations paid during the audit year and the amount of time they work direct;

(p) All contracts which were active during the audit year; and

(q) Minutes from the directors or stockholders meetings.

(4)(a) Except for the items set forth in subsection (3)(c) and (q) of this section, the auditor shall be allowed to make a copy [firm shall provide the auditor with copies] of the items set forth in subsection (3) of this section.

(b) The auditor may review the items set forth in subsection (3)(c) and (q) of this section but shall not remove them from the premises of the firm.

(5) A direct cost shall be determined by the provisions of 48 CFR 31.202 and not by whether it is reimbursable.

Section 2. Limitations on [~~Overhead;~~] Direct Costs[;] and Indirect Costs. (1) The maximum annual compensation [direct salary] for a principal or partner of a firm shall be \$100,000 per year.

(2) The maximum annual compensation for a nonprincipal or nonpartner of a firm shall be \$90,000 per year. [In the calculation of indirect costs for overhead, the maximum salary for administrative purposes shall be:

(a) \$100,000 a year for a principal or partner of a firm; or

(b) \$90,000 a year for a nonprincipal or nonpartner of a firm.

(3) The maximum direct salary shall be:

(a) \$100,000 per year for a principal or partner of a firm; or

(b) \$90,000 per year for a nonprincipal or nonpartner of a firm;

(4)(a) The lobbying portion of dues paid to organizations shall not be allowed in the computation of indirect costs.

(b) If an organization has not separated the lobbying portion of its dues in the billing statement, the organization shall be contacted by the auditor for the information.

(c) If the amount of the dues attributable to lobbying is not made available to the auditor, the total amount of dues paid to the organization shall not be allowed in computation of indirect costs.]

(3) [(5)] To compute the average hourly pay rate for a [any] salaried job classification at a firm, the number of available annual working hours per year shall be 2080.

(4) [(6) As a reasonableness test for indirect labor charges;] Indirect labor charges, including but not limited to bonuses and temporary help, shall not exceed sixty-seven (67) percent of the direct labor base of the firm.

Section 3. Approved Audits. (1) If the cabinet has not audited the firm in the previous twelve (12) months, the last available audit may be used for determination of the fee specified in the contract with the understanding that a contract modification shall be processed if an audit by the cabinet reveals substantial differences in overhead rates, wage rates or direct project expenses.

(2)(a) If the firm has an audit which covers the time period that the Transportation Cabinet's audit will cover and which was [a current audit of sufficient detail] prepared by the [a] Defense Contract Audit Agency, an independent certified public accountant, or other audit accepted by a federal, state, or local governmental agency [and desires the Transportation Cabinet to utilize that audit for establishment of its overhead rate], the firm shall provide [in a timely manner] the audit report to the Transportation Cabinet prior to the scheduled audit.

(b) The [~~External Audit Branch of the~~] Transportation Cabinet shall review any audit submitted [to the Transportation Cabinet] pursuant to the provisions of paragraph (a) of this subsection. If necessary for an

adequate review, the firm shall provide a copy of the audit work papers in addition to the audit report.

(c) The [External Audit Branch of the] Transportation Cabinet may approve the audit for use, disapprove the audit for use, or approve the audit **for use** based on limitations imposed by the Transportation Cabinet pursuant to 600 KAR 6:070.

(d) 1. Subject to the review performed in paragraph (b) of this subsection and any adjustments made based on limitations imposed by the Kentucky Transportation Cabinet pursuant to 600 KAR 6:070, the negotiation unit may use the overhead rates, wage rates, and direct project expenses from an audit submitted pursuant to paragraph (a) of this subsection in negotiating a fee.

2. This shall only be done with the understanding that a contract modification shall be processed if an audit by the cabinet reveals substantial differences in overhead rates, wage rates, or direct project expenses and if an overhead submission packet is received in a timely manner allowing the **Transportation Cabinet [Division of Professional Services' External Audit Branch]** sufficient time to perform or verify the overhead audit.

(3) Quarterly, the **Transportation Cabinet [Division of Professional Services]** shall **review [select]** a minimum of thirty (30) percent of the number of [one (1) and a maximum of three (3)] lump sum contracts that have been completed during the previous three (3) months [and shall request an audit from the External Audit Branch].

Section 4. Audit Standards. (1) The Transportation Cabinet, when auditing a firm, shall abide by the accounting and auditing standards contained in the following:

(a) ~~The material [adopted without change or] incorporated by reference in Section 6(1) [and (2)] of this administrative regulation; and~~  
(b) ~~The federal regulations adopted in Section 6(2)(a), (b), (c), and (d) of this administrative regulation.~~

(2) The term "common control" or "related parties" as used in Number 57 of the "Original Pronouncements, Accounting Standards as of June 1, 1997 [1995], Volume I and Volume II" shall be determined to exist when the relationship between a consultant firm and another company which is involved in real property renting, leasing arrangements, or joint ventures is such that:

(a) A principal or person with management responsibilities or significant influence in the consultant firm owns twenty (20) percent or more of the other company; or

(b) A principal or person with management responsibilities or significant influence in the consultant firm is also a principal or person with management responsibilities or significant influence in the other company; or

(c) A principal or person with management responsibilities or significant influence in the consultant firm has a family member whom he might control or influence because of the family relationship and who is a principal or has management responsibilities or significant influence in the other company; or

(d) A principal or person with management responsibilities or significant influence in the consultant firm has a family member who might control or influence him because of the family relationship and who is a principal in or has management responsibilities or significant influence in the other company; or

(e) **The interrelationship that exists between business entities makes it appear that the same persons control or have significant influence in those businesses.**

(f) 2. The term "common control" as it is used in 48 CFR Part 31 shall be determined to exist when the companies or the principals of the company involved in real property renting, leasing arrangements, or joint ventures share common ownership of twenty (20) percent or more.]

**Section 5. Audit Findings. (1) [(3)](a)** Prior to the issuance of a final audit report, the auditor from the Transportation Cabinet shall present **preliminary [the draft audit] findings** to the firm [either in an exit conference or in written correspondence to the firm].

(b) **If the auditor's preliminary findings include an adjustment to the overhead rate submitted by the firm, the auditor's work papers shall be included with the preliminary findings.** [If the auditor provides the draft audit findings in writing, he shall notify the firm that within one (1) week of the mailing of the draft audit findings, the firm may request a copy of the auditor's work papers for review.]

(c) Any comments **from** the firm **shall be submitted [submits]** in writing within fifteen (15) **calendar** days of the **firm's receipt [mailing]** of the **preliminary findings**.

(d) **The firm's comments [work papers]** shall be taken into consideration in the issuance of the final [audit] report.

[(c) If the auditor and the firm hold an exit conference, the auditor shall allow the firm to review or copy the work papers. The firm may submit any additional comments in writing within fifteen (15) days of the exit conference. These additional comments shall be taken into consideration in the issuance of the final audit report.]

(2)(a) [Section 5: Appeal of Audit Findings. (1)] If a firm disagrees with the [final] results of a **final report issued [an audit performed or approved]** by the Transportation Cabinet, the firm may request a review [of the audit] within thirty (30) **calendar** days of the date the final [audit] report is **received by [transmitted to]** the firm.

(b) The request for a review shall be in writing and clearly state all of the concerns with the **final report [audit]** and the reasons for the concern.

(c) **If the concerns and the reasons for the concerns are not clearly stated, the request for review shall be returned.**

(d) **A supplement to the request for review may be submitted in writing within the thirty (30) calendar days set forth in paragraph (a) of this subsection.**

(3) **The Audit Review Subcommittee shall evaluate the request for review and the final report.**

(4) [(2)] The Audit Review Committee shall consist of the following:

(a) Commissioner of the Department of Fiscal Management, Chair;  
(b) Deputy State Highway Engineer for Project Development; and  
(c) General counsel.

(5) [(3)] A committee member may appoint a proxy to serve on this committee.

(6) [(4) The Audit Review Committee shall discuss the findings of the audit and the request for review.] The Audit Review Committee may request the firm or the auditor to answer questions in person, by electronic communication, or in writing.

(7)(a) [(5)] If the firm is not satisfied with the decision of the Audit Review Committee, **the firm [he]** may [further] appeal to the Secretary of the Transportation Cabinet within thirty (30) **calendar** days of **receipt by the firm [transmittal]** of the committee's decision [to the firm].

(b) An administrative hearing to hear the appeal shall be held pursuant to the provisions of KRS Chapter 13B.

Section 6. Material Incorporated by Reference. (1) The following material is incorporated by reference:

(a) "Government Auditing Standards, 1994 Revision" by the Comptroller General of the United States;

(b) "Codification of Statements on Auditing Standards, (Including Statements on Standards for Attestation Engagements)," copyright 1997 [1995] by the American Institute of Certified Public Accountants, Inc.; and

(c) "Original Pronouncements, Accounting Standards as of June 1, 1997 [1995], Volume I and Volume II" published by the Financial Accounting Standards Board.

(2) The following federal regulations are adopted without change:  
(a) 48 CFR Part 31, "Contract Cost Principles and Procedures," as effective October 1, 1997 [1995];

(b) 48 CFR Part 30, "Cost Accounting Standards Administration," as effective October 1, 1997 [1995], but only as it relates to 48 CFR Part 31;

(c) 48 CFR Chapter 99, Subchapter B, "Procurement Practices and Cost Accounting Standards," as effective **October 1, 1997 [March 30, 1995]**; and

(d) 26 CFR Part 1.167, "Depreciation," as effective July 18, 1995, but only when the firm does not have an acceptable depreciation schedule in effect; and

(3) All material incorporated by reference as a part of this administrative regulation may be [obtained; viewed; or copied] at the External Audit Branch, 3rd Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-4555 [7008]. The office hours are 8 a.m. to 4:30 p.m. eastern time on weekdays.



## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

(4) The material adopted as a part of this administrative regulation may be obtained, viewed, or copied at the External Audit Branch, 3rd Floor State Office Building, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-4555. The office hours are 8 a.m. to 4:30 p.m. eastern time on weekdays.

(5) The material incorporated by reference may be obtained as follows:

(a) For a copy of "Government Auditing Standards, 1994 Revision" by the Comptroller General of the United States contact the U.S. Government Printing Office, Superintendent of Documents, Mail Stop:SSOP, Washington, D.C. 20402-9328;

(b) For a copy of "Codification of Statements on Auditing Standards, (Including Statements on Standards for Attestation Engagements)", copyright 1997 by the American Institute of Certified Public Accountants, Inc. contact The American Institute of Certified Public Accountants, Inc., Harborside Financial Center, 201 Plaza Three, Jersey City, New Jersey 07311-3811; and

(c) For a copy of "Original Pronouncements, Accounting Standards as of June 1, 1997, Volume I and Volume II" published by the Financial Accounting Standards Board contact the Financial Accounting Standards Board, 401 Merritt 7, P.O. Box 5116, Norwalk, CT 06856-5116.

J.M. YOWELL, P.E., State Highway Engineer

JAMES C. CODELL, III, Secretary

TODD SHIPP, Office of General Counsel

APPROVED BY AGENCY: July 7, 1998

FILED WITH LRC: July 10, 1998 at 11 a.m.

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Charles Harman

(1) Type and number of entities affected: There are 250 firms prequalified to perform professional engineering or related services each year. These are the same firms that provide proposals on projects and ultimately negotiate contracts. Therefore, all of these firms must maintain their records and have their books audited in accordance with the provisions of this administrative regulation.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The only cost to the firms is of the audit and the administrative requirements associated with the audit.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: The firms are required to maintain their records in accordance with 48 CFR Part 31.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body: The Transportation Cabinet is required to perform many audits each year.

(a) Direct and indirect costs or savings: The annual cost for the External Audit Branch to perform this function is approximately \$200,000.

1. First year: The total cost to the Transportation Cabinet is approximately \$200,000.

2. Continuing costs or savings: Same each year.

3. Additional factors increasing or decreasing costs: Without a process like this, the public could not be assured of getting the best possible product. Therefore, there is an ultimate savings to the Commonwealth.

(b) Reporting or paperwork requirements: Performance of the audit and preparation of the audit documents.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State Road Fund as authorized in the Transportation Cabinet budget.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not setting forth much of the audit criteria was rejected because the consultant community needs to know what restrictions will apply and what standards will be followed in the performance of the audit.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping or duplication: None

(a) Necessity of proposed administrative regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) Tiering: Was tiering applied? No. All recordkeeping and audits must be done according to the same standards.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Title 23 of the United States Code and 48 CFR Parts 30 and 31 and Chapter 99.

2. State compliance standards. The state has mandated that both the Transportation Cabinet and its consultants comply with the federal acquisition regulations.

3. Minimum or uniform standards contained in the federal mandate. The federal mandates specify the accounting procedures the firms must use and the auditing procedures the Transportation cabinet must follow.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? The accounting procedures are extended to all prequalified firms regardless of the source of funding for a particular project since any prequalified consultant will be able to submit a proposal on a federally-funded project.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. A prequalified firm may be selected for a federally-funded project at any time. Therefore, even if it has only previously been selected for state-funded projects, it has to maintain its financial records in accordance with the federal mandate.

**TRANSPORTATION CABINET**  
**Department of Vehicle Regulation**  
**Division of Motor Vehicle Licensing**  
**Division of Driver Licensing**  
**Department of Administrative Services**  
**(Amended After Hearing)**

**601 KAR 2:020. Drivers' privacy protection.**

RELATES TO: KRS 61.870 - 61.884, 187.310, 18 USC Ch. 123

STATUTORY AUTHORITY: KRS 61.874

NECESSITY, FUNCTION, AND CONFORMITY: The 1994 National Crime Prevention Act included a section called "The Drivers' Privacy Protection Act" codified as 18 USC Chapter 123 which mandates the information which can and cannot be included in information sold or otherwise distributed about motor vehicle operators or owners. This administrative regulation is the means used by the Department of Vehicle Regulation to establish under what circumstances and conditions the personal information will be distributed or sold.

Section 1. Definitions. "Personal information" means information that identifies an individual including the following:

- (1) Name;
- (2) Address, excluding the zip code;
- (3) Social Security Number;
- (4) Date of birth;
- (5) Driver identification number;
- (6) Telephone number;
- (7) Photograph; and
- (8) Medical or disability information.

Section 2. (1) In the Driver Licensing Computer Information System the following shall not be considered personal information:

- (a) Driver status; and
- (b) Violation or conviction of a traffic law.

(2) The information included in the Driver Licensing Computer System shall not be distributed or sold contrary to KRS 187.310.

Section 3. Personal information in the Driver Licensing Computer Information System or the Automated Vehicle Information System, including personal information relating to the owner of a boat, may be released for the following reasons:

(1) For use by a government agency, including a court or law enforcement agency, in carrying out its functions, or a private person or entity acting on behalf of a federal, state, or local agency in carrying out its functions;

(2) For use in connection with matters relating to the following:

- (a) Motor vehicle or driver safety;
- (b) Motor vehicle theft;
- (c) Motor vehicle emissions;
- (d) Motor vehicle product alterations, recalls, or advisories;
- (e) Performance monitoring of motor vehicles, motor vehicle parts, or dealers;

(f) Motor vehicle market research activities, including survey research; and

(g) Removal of nonowner records from the original owner records of motor vehicle manufacturers;

(3) For use in the normal course of business by a legitimate business or its agent, employee, or contractor, but only:

- (a) To verify the accuracy of personal information submitted by the individual to the business or its agent, employee, or contractor; or
- (b) If the submitted information is not correct or is no longer correct, to obtain the correct information, but only for the purpose of preventing fraud by pursuing legal remedies against, or recovering on a debt or security interest against the individual;

(4) For use in connection with a civil, criminal, administrative, or arbitral proceeding in any federal, state, or local court or agency or before any self-regulatory body, including the service of process, investigation in anticipation of litigation, and the execution or enforcement of judgments and orders, or pursuant to an order of a federal, state, or local court;

(5) If the personal information is not published, redisclosed, or used to contact an individual, for use in:

- (a) Research activities; or
- (b) Producing statistical reports.

(6) For use by any insurer or insurance support organization, or by a self-insured entity, or its agent, employee, or contractor, in connection with claims investigation activities, antifraud activities, rating, or underwriting;

(7) For use in providing notice to the owner of a towed or impounded vehicle;

(8) For use by any licensed investigative agency or licensed security service for a purpose permitted under this subsection;

(9) For use by an employer or its agent or insurer to obtain or verify information relating to a holder of a commercial driver's license that is required under the Commercial Motor Vehicle Safety Act of 1986 (49 USC App.2710 et seq.);

(10) For use in connection with operation of a private toll transportation facility; or

(11) For use by any requester, if the requester demonstrates he has obtained the written consent of the individual to whom the information pertains.

Section 4. A person wishing pursuant to Section 3 of this administrative regulation to obtain a record which includes personal information, shall complete one (1) of the following or its preapproved electronic equivalent:

tronic equivalent:

(1) If the record is in the Driver Licensing Computer Information System:

(a) Transportation Cabinet form TC 94-1, "Request for Driver Licensing Record(s) which Include Personal Information"; [or]

(b) Transportation Cabinet form TC 94-2, "Motor Vehicle Insurer's Request for Driver Licensing Records which Include Personal Information";

(c) Transportation Cabinet form TC 94-40, "Multiple Requests for Driver Licensing Records Which Include Personal Information"; or

(d) Transportation Cabinet form TC 10-301, "Agreement Relating to Driver Licensing Records"; or

(2) If the record is in the Automated Vehicle Information System:

(a) Transportation Cabinet form TC 96-16, "Request for Motor Vehicle or Boat Record which Includes Personal Information"; or

(b) Transportation Cabinet form TC 96-325, "Multiple Requests for Motor Vehicle or Boat Records Which Include Personal Information."

Section 5. (1) In addition to Section 3 of this administrative regulation, the selling of information from the Automated Vehicle Information System relating to a motor vehicle registered or titled in the Commonwealth of Kentucky shall be allowed if the information is to be used, rented, or sold solely for bulk distribution for surveys, marketing, or solicitations.

(2) The surveys, marketing, or solicitations shall not be directed at an individual who has requested that they not be directed at him pursuant to Section 6 of this administrative regulation.

(3) A person requesting information pursuant to this section shall sign an agreement with the Transportation Cabinet in order to apply for this information. This request shall be on Transportation Cabinet Form TC 10-300, "Agreement Relating to Motor Vehicle or Boat Records" which relates to use of information requested from the Automated Vehicle Information System.

Section 6. (1) A person who does not wish to have surveys, marketing, or solicitations directed at himself from information obtained from the Automated Vehicle Information System shall complete and file a copy of Transportation Cabinet Form TC 96-320 "Request to Withhold Personal Information" with the Division of Motor Vehicle Licensing.

(2) The motor vehicle licensing office of each county clerk shall prominently display a sign explaining that an individual is allowed to complete this form in order that his personal information not be included in a commercial bulk sale.

(3) If a person renews his motor vehicle registration by mail pursuant to KRS 186.020(5) the county clerk shall include in the package which contains the renewed registration form for each individual a copy of Transportation Cabinet form TC 96-320.

Section 7. Retention of Records. A form completed pursuant to Section 4 or 5 of this administrative regulation shall be retained by the agency or office providing the record containing personal information for a minimum of two (2) years [six (6) months].

Section 8. Incorporation by Reference. (1) The following material is incorporated by reference as a part of this administrative regulation:

(a) Transportation Cabinet form TC 94-1 "Request for Driver Licensing Records which Include Personal Information" effective July 1998 [August 1997];

(b) Transportation Cabinet form TC 94-2 "Motor Vehicle Insurer's Request for Driver Licensing Records which Include Personal Information" effective July [May] 1998;

(c) Transportation Cabinet form TC 96-16 "Request for Motor Vehicle or Boat Record which Includes Personal Information" effective July 1998 [October 1997];

(d) Transportation Cabinet form TC 96-320, "Request to Withhold Personal Information" effective October 1997; [and]

(e) Transportation Cabinet form TC 10-300, "Agreement Relating to Motor Vehicle or Boat Records" effective July 1998;

(f) Transportation Cabinet form TC 94-40, "Multiple Requests for Driver Licensing Records Which Contain Personal Information" effective July 1998;

(g) Transportation Cabinet form TC 94-40, "Multiple Requests for Motor Vehicle or Boat Records Which Contain Personal Information" effective July 1998; or

(h) Transportation Cabinet form TC 10-301, "Agreement Relating to Driver Licensing Records" effective July 1998 [September-1997].

(2) The material incorporated by reference in this administrative regulation may be viewed, copied, or obtained from the following offices within the Transportation Cabinet. The office hours of each office are 8 a.m. to 4:30 p.m., local prevailing time on weekdays.

(a) TC 96-320, **TC 96-325**, and TC 96-16 from the Department of Vehicle Regulation, Division of Motor Vehicle Licensing, 501 High Street, Frankfort, Kentucky 40622, telephone number is (502) 564-5301.

(b) TC 94- 1, [and] TC 94-2, **and TC 94-40** from the Department of Vehicle Regulation, Division of Driver Licensing, 501 High Street, Frankfort, Kentucky 40622, telephone number is (502) 564-6800.

(c) TC 10-300 **and TC 10-301** from the Department of Administrative Services, 501 High Street, Frankfort, Kentucky 40622, telephone number is (502) 564-3670.

ED ROBERTS, Commissioner

ED LOGSDON, Commissioner

JAMES C. CODELL, III, Secretary

TODD SHIPP, Office of General Counsel

APPROVED BY AGENCY: July 8, 1998

FILED WITH LRC: July 10, 1998 at 11 a.m.

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Sandra Pullen Davis

(1) Type and number of entities affected: 3 million vehicle operators and owners in Kentucky.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Emergency regulation. Public comment hearing has not yet been held. However, the larger Kentucky industries such as Toyota and Ford have indicated that the ability to make bulk mailings to the citizens of Kentucky is critical to their continued economic well-being.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received:

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Each time an entity wishes to purchase information from the motor vehicle/operator records maintained by the Transportation Cabinet, it will have to complete a form stating the proposed of the use of the information.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: While \$50,000 in name sales will no longer be made from the Driver Licensing Computer System each year, the cost of administering the program and preparing data requests will be eliminated. The net result should be \$0. There should be no changes in the Automated Motor Vehicle Licensing System in regard to costs/income. However, the Cabinet will have to absorb the cost of printing and distributing form and posters relating to the program. Based on information from other states, we expect 50,000 people to request that their information not be sold for commercial purposes. This information will have to be entered into the computer.

1. First year: A net cost of approximately \$50,000 each year.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Kentucky Road Fund as appropriated to the Departments of Vehicle Regulation and Administrative Services.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Cabinet strongly considered not selling information for commercial purposes at all. However, several of the larger industries in Kentucky objected pointing out that the information they purchase from the Automated Vehicle Information System is critical to their marketing efforts and therefore economic well-being.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Tiering is used in that there is more paperwork required of an entity wishing to obtain personal information for use in commercial purposes. Those persons wishing to use the information for a noncommercial, legitimate purpose can quickly complete the required form.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 18 USC Chapter 123, commonly called "National Drivers' Privacy Protection Act."

2. State compliance standards. As required for the sale or distribution of personal information from a motor vehicle or driver licensing data base, Kentucky is offering each person who registers or titles a motor vehicle in Kentucky the opportunity to opt-out of the sale or distribution of his personal information. Any person who wishes to obtain personal information from one of the Department of Vehicle Regulation's computer data bases will be required to identify the use to be made of the personal information. If the use is one of the uses set forth in 18 USC as being an acceptable use of the personal information, the requestor will also have to affirm that no other use will be made of the information. If the personal information is to be used, rented, or sold solely for bulk distribution for surveys, marketing, or solicitations, the requestor will have to execute an agreement with the Transportation Cabinet guaranteeing no additional use of the information.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate defines "personal information" and requires that the sale or distribution of personal information from a motor vehicle or driver licensing data base be limited to certain uses. If the personal information is to be used, rented, or sold solely for bulk distribution for surveys, marketing, and solicitations, the federal mandate requires that each affected person be given the opportunity to opt-out of the sale or distribution of his personal information.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. The federal mandate specifically establishes that a driver's status, conviction for a violation of a traffic law, and an accident report are not to be considered "personal information", therefore, placing no restrictions on the sale or distribution of this information. However, KRS 187.310 does place restrictions and time limits on the distribution of this information. Therefore, the administrative regulation acknowledges the existence of KRS 187.310 and does not allow the information on the actual accident report to be given out. The administrative regulation is also stricter than the federal mandate in not allowing name sales for bulk marketing purposes from the Driver Licensing Computer

Information System. The decision was made to restrict those name sales in the interest of the protection of personal information. Unlike with the sales from the Automated Vehicle Information System which almost always cover thousands of persons and from which the applicant is not able to select persons based on age or sex, the sales from the Kentucky Driver Licensing Computer Information System in the past have largely been aimed at a particular age group or gender. To the Transportation Cabinet, this seemed to be too selective, allowing someone to submit a request for a list of persons meeting very specific criteria. The misuse of such lists was the reason the National Driver's Privacy Protection Act was passed. Therefore, the Transportation Cabinet chose to limit the use of the information in the Driver Licensing Computer Information.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes
2. State what unit, part or division of local government this administrative regulation will affect. The motor vehicle registration office of the County Clerk and the Driver Licensing Issuance Office of the Circuit Clerk.
3. State the aspect or service of local government to which this administrative regulation relates. As an agent for the Transportation Cabinet, the County Clerks register and title the motor vehicles based in Kentucky. This service is affected by this administrative regulation. As an agent for the Transportation Cabinet, the Circuit Clerks issue operator's licenses to eligible persons. They have access to the Driver Licensing Computer Information System and are therefore subject to the provisions of this administrative regulation.
4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There will be additional time required for the motor vehicle personnel in the office of each County Clerk in order to place Transportation Cabinet form TC 96-320 in the return package for each person who renews his motor vehicle registration by mail. In addition, the personnel will be required to post the public information sign required by this administrative regulation and make Transportation Cabinet form TC 96-320 available to vehicle owners who are in the office. The Circuit Clerks will have almost no change in their area of responsibility and work load.

#### CABINET FOR HEALTH SERVICES Department for Mental Health and Mental Retardation Services (Amended After Hearing)

**908 KAR 1:370. Licensing procedures and standards for persons and agencies operating nonmedical and nonhospital based alcohol and other drug abuse treatment programs.**

RELATES TO: KRS 222.231

STATUTORY AUTHORITY: KRS 194.050, 222.231, EO 96-862

NECESSITY, FUNCTION AND CONFORMITY: KRS 194.050 and 222.231 mandate the Cabinet for Health Services to establish requirements and standards for licensing a person or an agency and approving nonmedical and nonhospital based alcohol and other drug abuse treatment programs. Executive Order 96-862, effective July 2, 1996, reorganizes the Cabinet for Human Resources and places the Department for Mental Health and Mental Retardation Services and its programs under the Cabinet for Health Services. This administrative regulation provides licensure requirements which establish minimum standards for a person or an agency operating a nonmedical or nonhospital based [an] alcohol and other drug abuse detoxification, residential, family residential, residential transitional living, outpatient, [or] intensive outpatient, and halfway house [treatment] program.

Section 1. Definitions. (1) "Accredited college or university" means an institution listed in the most recent college handbook published by the college board.

(2) "Agency" means as defined in KRS 222.005(2).

(3) "Alcohol and other drug abuse" means as defined in KRS 222.005(12).

(4) ~~["Alcohol and other drug abuse treatment entity" means an agency or a business owned by an individual, which operates one (1) or more of the following alcohol and other drug abuse treatment programs: detoxification, residential, family residential, residential transitional living, outpatient or intensive outpatient.~~

(5) "Alcohol and other drug free work place" means a set of policies established by an AODE to create a work environment where the unlawful manufacture, distribution, possession, or use of a controlled substance or the use of alcohol is strictly prohibited.

(5) [(6)] "AODE" means a nonmedical and nonhospital based [an] alcohol and other drug abuse treatment entity owned by an individual or agency which operates one (1) or more of the following programs: detoxification, residential, family residential, residential transitional living, outpatient, intensive outpatient or halfway house.

(6) "Cabinet" means the Office of Inspector General, Division of Licensing and Regulation, Cabinet for Health Services, 275 East Main Street, Frankfort, Kentucky 40621.

(7) "Case management" means an activity which brings services, agencies, resources, or people together to take actions toward the achievement of a client's goals.

(8) "Client" means an individual who receives treatment services in a licensed AODE.

(9) "Client record" means a file containing documentation of client services and other client data.

(10) "Clinical service" means a diagnostic and treatment activity received by a client in a program of a licensed AODE.

(11) "Clinical services supervisor" means an individual responsible for monitoring and directing diagnostic and treatment services and providing consultation and instruction to clinical staff [a clinician and case manager to ensure he is engaged in sound clinical practice].

(12) "Clinician" means an individual who ~~[has assigned alcohol and other drug abuse client cases;]~~ conducts clinical assessments, is responsible for developing a [and implementing an alcohol and other drug abuse] client's treatment plan, and who leads counseling sessions.

~~[(14) "Confirmatory drug or alcohol screening test" means a follow-up test utilizing a second independent chemical methodology.]~~

(13) "Controlled substance" means as defined in KRS Chapter 218A.

(14) "Counseling" means a relationship where a clinical staff person helps a client mobilize resources to resolve problems and modify attitudes and behavior.

(15) "Courtney Disposition System" means a statewide database, maintained by the Kentucky Administrative Office of the Courts, containing all criminal conviction data involving both state and local law enforcement agencies in Kentucky.

(16) "Daily living skills" means budgeting, meal planning, shopping, personal [personnel] hygiene, housekeeping and using public transportation.

(17) "Detoxification program" means a supervised nonmedical withdrawal from an alcohol or other drug induced intoxication and an assessment of a client's need for further care resulting in referrals to appropriate resources.

(18) "Diagnosis" means a condition listed in the current Diagnostic and Statistical Manual, which is a desk reference for determining physical and mental conditions based on a set of signs and symptoms.

(19) "Diagnostic impression" means a preliminary determination of a diagnosis made prior to the completion of a treatment plan.

(20) "Diagnostic summary" means a written analysis of client assessment information for the purpose of identifying patterns of behavior and prioritizing problems to be addressed in treatment.

~~[(23) "Division" means the Division of Substance Abuse, Department for Mental Health and Mental Retardation Services, Cabinet for Health Services, 100 Fair Oaks Lane, 4E-D, Frankfort, Kentucky 40621-0001.~~

(24) "Emergency procedures" means crisis intervention, cardio-pulmonary resuscitation, and standard first aid.]

(21) "Facility" means the physical area where a treatment program is operated by an agency.

(22) "Family residential [treatment] program" means an organized intensive set of therapeutic activities provided in an environment where the client resides twenty-four (24) hours a day with his children.

(23) "Federally-assisted" means as defined in 908 KAR 1:320.

(24) "Governing authority" means the person or agency in which the ultimate responsibility and authority for the operation of the AODE is vested.

(25) "Halfway house" means a therapeutic group setting where counseling is not provided by staff and where a client resides twenty-four (24) hours a day and makes a social and vocational adjustment prior to returning to family or independent living in the community.

(26) "Immediate danger" means a condition in the program which could or has caused death or serious physical injury.

(27) "Intake" means an administrative and initial assessment procedure completed at the time of a client's admission to a program.

(28) "Intensive outpatient [treatment] program" means a structured comprehensive program of individual and group therapeutic activities delivered in a nonresidential setting, where a client is assisted in recovery from alcohol or other drug abuse on a scheduled and intense basis.

(29) "OHSAD" means an organized health care substance abuse care delivery system which is an AODE agency which operates outpatient, intensive outpatient, detoxification programs and at least one (1) of the following: residential, family residential, residential transitional living and halfway house programs, in multiple sites that are accessible to all residents throughout a prescribed grouping of counties that conform to the area development districts within which the OHSAD is located.

(30) "Outpatient [treatment] program" means individual and group therapeutic activities, assisting a client in recovery from alcohol or other drug abuse, provided in a nonresidential setting on a scheduled and unscheduled basis.

[(33) "Presumptive drug or alcohol screening test" means testing through the use of a chemical screening methodology for the presence of drugs or alcohol in a urine or blood sample.

(34) "Primary responsibility" means having the main obligation for ensuring that a child's needs are met regarding food, clothing, hygiene, safety, discipline, supervision and follow-up on a referral to a community resource.]

(31) "Program" means as defined in KRS 222.005(10).

(32) "Recovery" means rehabilitation from alcohol or other drug abuse.

(33) "Registered dietitian" means an individual registered with the American Dietetic Association.

[(38) "Relapse prevention plan" means a written assessment of potential triggers which may cause a client to use alcohol or other drugs and the identification of therapeutic activities and strategies focused on eliminating the potential triggers.]

(34) "Residential transitional living program" means a therapeutic group setting, where counseling is provided by staff, and where a client resides twenty-four (24) hours a day, and makes a social and vocational adjustment prior to returning to family or independent living in the community.

(35) "Residential [treatment] program" means a set of organized and intensive individual and group therapeutic activities, provided in a twenty-four (24) hour setting, which assists a client in recovering from alcohol or other drug abuse.

[(41) "Screening" means the preliminary process used to identify a client's needs to determine if the client is eligible for admission to a particular program or is in need of a particular service.]

(36) "Self-help group" means activities provided in a self-directed peer group setting, for a person recovering from alcohol or other drug abuse or the effects of another person's alcohol or other drug abuse, where support and direction in achieving or maintaining an alcohol and drug free life style or in learning to cope with a problem related to another person's alcohol or other drug abuse is provided.

(37) "Service" means a therapeutic activity provided in a program to meet a client's rehabilitation needs as they relate to the use of alcohol or other drugs.

(38) "Special dietary requirements" means a diet required by a physician's prescription or for a client's religious or ethical reasons.

(39) "Substantial health risk" means a condition which creates a significant risk of death or which causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any organ of the body.

(40) "Treatment" means as defined in KRS 222.005(13).

(41) "Withdrawal" means the physiological readjustment of the body after an individual stops using alcohol or other drugs.

Section 2. Licensing Requirements. (1) An AODE shall be required to obtain a license from the cabinet before operating a program unless exempted under KRS 222.003(1) or 222.231(1). Each facility of the AODE shall be licensed separately unless the AODE is an OHSAD. An OHSAD shall be issued one (1) license which shall apply to each facility that is operated by the OHSAD. An AODE operating without obtaining a license for each facility, unless otherwise exempted, shall be subject to the penalties in KRS 222.990(2). A program licensed as a non-medical alcohol treatment and education (NATE) center and drug abuse treatment and education (DATE) center, pursuant to 908 KAR 1:010 - 1:260 or a community mental health center licensed pursuant to 902 KAR 20:091 for alcohol and other drug abuse outpatient or intensive outpatient programs, on the effective date of this administrative regulation, shall be required to obtain an AODE license when the current license expires or within one (1) year from the effective date of this administrative regulation, whichever is earlier. [An AODE shall not operate without first obtaining a license from the cabinet for each facility unless exempted under KRS 222.003(1) and 222.231(1). An AODE operating without obtaining a license for each facility from the cabinet shall be subject to the penalties stated in KRS 222.990(2).]

(2) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary, a solo practitioner [an individual owner of a business] who provides alcohol and other drug abuse treatment services pursuant to Kentucky Revised Statutes governing the independent clinical practice of psychology, social work, medicine, psychiatric nursing, marriage and family therapy, professional counseling, alcohol and drug counseling and art therapy is not required to obtain an AODE license.

(3) If more than one (1) AODE operates at the same location, each AODE shall maintain a separate organizational identity by:

(a) Conspicuously posting a sign in a public area showing the name of the AODE;

(b) Utilizing a separate logo or letterhead on written materials;

(c) Maintaining client records in a separate and secure cabinet; and

(d) Conducting treatment services separate from another AODE located at the same location.

(4) The license shall be conspicuously posted in a public area of each facility and shall specify which programs are approved for operation at the facility and the date the license expires.

(5) The cabinet shall make available to the public upon request, a list of licensed AODEs, showing the location of each facility and the type of program operated at each facility. The cabinet may issue revisions and corrections to this list as changes occur.

(6) Application for a license. An application for licensure or relicensure shall be obtained from and submitted to the cabinet and shall include:

(a) The AODE name, owner and mailing address;

(b) Facility address and phone number;

(c) Type of programs to be operated at each facility; and

(d) Hours of operation.

(7) An application for licensure shall be accompanied by a fee of \$155 for each facility.

(8) An application for relicensure shall be accompanied by a fee of eighty (80) dollars for each facility.

(9) An application for licensure or relicensure shall be processed according to the following:

(a) The cabinet may conduct an unannounced on-site inspection of any facility;

(b) An AODE shall provide the cabinet access to each facility and to documents needed to complete an inspection during normal business hours;

(c) The cabinet shall notify an AODE in writing of the violation of a licensure standard identified during an inspection; and

(d) An AODE shall within ten (10) calendar days from receipt of the notice of violation, submit to the cabinet a written plan of correction specifying the corrective action to be taken and the date when each violation shall be corrected.

(10) The cabinet shall issue a license for a period of one (1) year to the owner of the AODE named in the application and the license shall be effective on the date ~~on which~~ approval is granted by the cabinet.

(11) Change in AODE status.

(a) Name change.

1. An AODE shall notify the cabinet in writing within ten (10) calendar days of the effective date of change.

2. An AODE shall submit a processing fee of twenty-five (25) dollars to the cabinet.

3. The cabinet may issue a new license for the remainder of the licensure period.

(b) Change of location. An AODE shall not operate a program at a new location until an application for licensure accompanied by a fee of eighty (80) dollars is filed with the cabinet.

(c) Change of ownership. The new owner of an AODE shall submit to the cabinet an application for licensure accompanied by a fee of \$155 for each facility within ten (10) calendar days of the effective date of change.

(d) Discontinuing a program. An AODE shall notify the cabinet in writing within ten (10) calendar days of the effective date of change.

(12) Denial of a license. If an AODE fails to submit an acceptable plan of correction within ten (10) calendar days from the date of a notice of violation, the cabinet may deny the application for licensure or relicensure.

(13) Negative licensure actions.

(a) Complaints. If a complaint is received by the cabinet, the cabinet may conduct an unannounced on-site inspection to determine if a violation of a licensure standard has occurred. An inspection shall be conducted in accordance with subsection (9) [(8)](b), (c) and (d) of this section.

(b) Revocation of a license. If an AODE fails to submit to the cabinet an acceptable plan of correction, the cabinet may revoke a license.

(c) Immediate revocation of a license. The cabinet shall immediately revoke a license in the case of immediate danger.

Section 3. Appeals. (1) If the cabinet takes action to deny, revoke or immediately revoke an AODE license, the cabinet shall notify an AODE in writing stating a reason for the adverse action and the AODE's right to appeal in accordance with KRS 222.231(6).

(2) An AODE may appeal a negative action by the cabinet in writing to the Secretary, Cabinet for Health Services, 4th Floor, 275 East Main Street, Frankfort, Kentucky 40621, within thirty (30) calendar days from the date of the notice of action from the cabinet.

(3) Upon receipt of an appeal, the secretary, or his designee, shall notify the AODE in writing within fifteen (15) calendar days of the time and place of the hearing. The secretary, or his designee, shall appoint a hearing officer to conduct the hearing in accordance with KRS Chapter 13B.

(4) A hearing officer shall have authority to issue a subpoena to compel the attendance of a witness and the production of a document to be used as evidence in a hearing held pursuant to this section.

(5) Based upon the record and upon the information obtained at the hearing, a hearing officer shall affirm or overturn the initial decision of a negative action. A decision of the hearing officer shall be final. An AODE shall be notified in writing by the secretary, or his designee, of the decision of the hearing officer.

(6) Immediate revocation. If an AODE's license is immediately revoked pursuant to Section 2(13) [(12)](c) of this administrative regulation, and the AODE requests a hearing, the cabinet shall conduct a hearing within five (5) working days of the cabinet's receipt of a request from the AODE. A hearing may be continued at the request of an AODE.

(a) The sole issue of the hearing shall be whether one (1) or more of the grounds for immediate revocation is immediate danger.

(b) The cabinet shall render a decision within five (5) working days of the hearing. If a decision is not rendered within five (5) working days of the hearing, or if a hearing officer overturns the cabinet's negative

action, an AODE shall have its license returned and be allowed to operate and continue the appeals process in accordance with subsections (1), (2), (3), (4) and (5) of this section.

(c) If a hearing officer decides within five (5) working days of the hearing that one (1) or more grounds for immediate revocation, is immediate danger, the action by the cabinet to immediately revoke the AODE's license shall be upheld pending action by the cabinet to accept a plan of correction or to permanently revoke the license.

(7) An AODE that continues to operate after a closing date established by the secretary, or his designee, shall be subject to legal action by the cabinet pursuant to KRS 222.990(2) [as provided by law].

Section 4. Physical Plant. (1) An AODE shall ensure and maintain documentation on-site that a facility is in compliance with building, fire, safety, and health standards specified by federal, state and local laws and regulations.

(2) An AODE shall ensure that a facility is in compliance with the Americans with Disabilities Act, 42 USC 12101 et seq.

(3) A facility, including the equipment, shall be kept in good repair, neat, clean, free from all accumulations of dirt and rubbish and free from foul, stale and musty odors.

(4) A facility shall be kept free from insects and rodents with their harborages eliminated.

(5) A facility shall conduct counseling sessions in [have a private] areas where recipients are ensured privacy and confidentiality [others will not be able to hear the content of a conversation during the delivery of a service].

(6) Outpatient setting. In addition to the standards [specified] in subsections (1), (2), (3), [and] (4) and (5) of this section, a program providing [including] counseling and education services in an outpatient setting shall provide at least nine (9) [twenty-(20)] square feet of individual space for each client while receiving a service.

(7) Twenty-four (24) hour setting. In addition to the standards [specified] in subsections (1), (2), (3), [and] (4), and (5) of this section, a treatment program conducted at a facility which provides twenty-four (24) hour care shall meet the following additional requirements:

(a) Including the square feet available within the entire facility, there shall be at least 120 square feet of space for each client residing in the facility;

(b) There shall be at least one (1) toilet and [-] one (1) sink per eight (8) clients, and at least one (1) shower or tub per fifteen (15) [eight-(8)] clients;

(c) There shall be a bed with clean bedding which includes sheets, pillowcase, blanket, and a pillow for each client;

(d) There shall be adequate lighting, heating, heated water and ventilation;

(e) There shall be space for a client to store personal belongings, including a receptacle where personal property may be stored and locked.

(f) There shall be an area provided for the following activities:

1. Sleeping;
2. Dining;
3. Bathing and toileting;
4. Lounge;
5. Laundry;
6. Visiting;
7. [Recreation;
- 8.] Private consultation; and
8. [9.] Telephone.

Section 5. Organization and Administration. (1) There shall be a governing authority with overall responsibility for the management and operation of an AODE.

(2) A governing authority shall:

(a) Be responsible for the direction of an AODE by establishing written policies and procedures for the operation of the AODE;

(b) Develop a mission statement outlining an AODE's purpose;

(c) Identify an administrator who shall be principally responsible for the day-to-day operation of an AODE;

(d) [Develop an administrative structure and establish a line of authority for each program which shall be documented on an organizational chart except when there is only one (1) individual working in the AODE;

(e)] Develop a policy to establish a [an-approved] fee schedule, to



abide by the fee schedule, to maintain financial records regarding the assessment and payment of client fees, and to provide a receipt for all client services delivered;

(e) [(f)] Maintain on file documentation that an AODE has obtained professional malpractice [liability] insurance to cover all clinical staff in the minimum amount of \$100,000 per occurrence;

(f) [(g)] Ensure that an AODE's policies and procedures are available to all personnel; and

(g) [(h)] Document that an AODE's policies and procedures are reviewed and revised as needed every two (2) years.

Section 6. Personnel Policies. (1) An AODE shall develop written policies and procedures governing personnel and employment practices.

(2) There shall be a written job description for each position stating qualifications, duties, and reporting supervisor [~~and positions supervised~~].

(3) There shall be evidence that all personnel are qualified for their position through documentation of education, work experience, and professional licensure, certification or registration.

(4) Policies shall be developed for:

(a) Maintaining an alcohol and other drug free work place including an action to be taken if any personnel:

1. Are convicted of the illegal [unlawful] manufacture, distribution, dispensation, possession or use of alcohol or a controlled substance; or

2. Uses alcohol or an illegal controlled substance while on the grounds of the AODE or if performing AODE business;

(b) Ensuring that all personnel engage in ethical practices in the delivery of [a] client services including a requirement that a clinician, as defined in Section 8(4)(d) of this administrative regulation, sign a code of ethics developed by the AODE [division]; and

(c) Prohibiting a conflict of interest resulting from a sexual, financial, or other relationship [activity] between a client and any personnel, which is adverse or exploitative to the client.

(5) A criminal background check shall be obtained by an AODE from the Administrative Office of the Court's Courtnet Disposition System on all [an] administrators and ~~on a~~ clinicians, who begin working in the AODE, after the effective date of this administrative regulation.

(6) An administrator or a clinician shall not be allowed to work in an AODE within two (2) years from the date of his release from incarceration, or probation or parole, for a felony conviction.

(7) An individual who has had a criminal conviction for the neglect, physical abuse, sexual abuse or sexual exploitation of a child or for endangering the welfare of a child shall not be allowed to work with a juvenile client.

(8) An administrator or a clinician shall not be allowed to work in the AODE if while working in the AODE he is convicted of a felony.

(9) A separate personnel record shall be maintained for each individual working in the AODE and shall contain:

(a) Job description;

(b) Documentation of education, work experience, and any professional licensure, certification or registration required for performance of the assigned job duties;

(c) Documentation of the criminal background check for an administrator or a clinician;

(d) A [clinician's] signed code of ethics in accordance with subsection (4)(b) of this section; [and]

(e) Documentation [A written summary] of each training [event] completed by the individual [AODE personnel], to include the topic, length, and date of the training [event in clock hours].

(f) Documentation of the annual performance evaluation; and

(g) A clinical services supervisor's signed agreement in accordance with Section 8(3) of this administrative regulation.

(10) There shall be written policies and procedures governing the duties [use] and supervision of volunteers and student interns in the AODE.

(11) There shall be written policies and procedures to establish a mechanism consistent with due process for suspension and dismissal of an employee for cause.

Section 7. Quality Assurance. (1) An AODE shall have written policies and procedures to ensure that quality services are

delivered and that the health and safety of the client population is protected while receiving a service.

(2) The policies and procedures shall establish a system for periodic review of each staff person's client caseload which includes:

(a) The quality of services shall be evaluated by members of the clinical staff responsible for providing services;

(b) The procedures shall at least have the capability to assess the appropriateness and clinical necessity of client admissions as well as the accuracy, completeness and appropriateness of the treatment plan and outcome;

(c) The client care review shall occur at regularly scheduled intervals;

(d) A written record of the client care review shall be generated identifying inappropriate patterns of service and the recommended action for correcting any problem. This report shall be submitted to the individual in the AODE with overall responsibility for the program's treatment services; and

(e) Follow-up studies shall be conducted related to the corrective actions taken and shall be completed within a reasonable period of time and the findings documented.

(3) The policies and procedures shall establish a system for responding to an accident or injury at the facility, that requires hospitalization or results in death, and an incident at the facility, involving fire damage, natural disaster or a threat to security that substantially interrupts the delivery of services, which includes:

(a) Documenting an incident or accident in an AODE incident file; and

(b) Reporting an incident or accident to the individual who is responsible for the day-to-day operation of an AODE and to an outside agency according to the following:

1. An incident of child abuse or neglect in accordance with KRS 620.030; and

2. An incident of adult abuse or neglect in accordance with KRS 209.030.

(4) The policies and procedures shall establish an infection control system which includes:

(a) A procedure for reporting, evaluating, and maintaining a record of an incident of infection in a client or any personnel which poses a substantial health risk to another person;

(b) Designating an individual within an AODE responsible for taking corrective action; and

(c) Orientation for all new personnel and annual in-service training for all personnel on infection control procedures and on specific information related to infections prevalent among alcohol and other drug abusers.

(5) The policies and procedures shall establish an emergency plan for responding to a disaster at the facility, including fire and severe weather, which includes:

(a) An emergency plan shall be conspicuously posted in a public area of each facility;

(b) A copy of the emergency plan shall be provided to all personnel;

(c) An AODE shall provide training for all personnel on how to report a fire, extinguish a small fire, and evacuate a building; and

(d) An AODE shall conduct a fire drill in accordance with 815 KAR 10:050. [An AODE shall have written policies and procedures to ensure that quality services are delivered and that the health and safety of the client population is protected while receiving a service.]

(2) The policies and procedures shall establish a system for client case review to include:

(a) An annual review of client cases to determine if an appropriate decision was made by a clinician regarding a client's diagnosis, admission, treatment plan, progress in relation to the treatment plan and termination;

(b) A system of peer review to ensure a clinician shall not review his own client cases and requiring that a reviewer meets the qualifications for a clinical services supervisor in accordance with Section 8(2) of this administrative regulation;

(c) A system for determining the number of open and closed cases to be reviewed annually and the method of case selection;

(d) A written record of each case review stating if the review is satisfactory or deficient, the corrective action to be taken, and the time frame for taking the action;

(e) The requirement for submitting the results of a written case review to a clinician, clinical services supervisor and an individual in the AODE responsible for managing the case review process; and

(f) Designating an individual responsible for managing a case review process, maintaining documentation of written case reviews, and following up to ensure that a corrective action is taken within the required time frame.

(3) The policies and procedures shall establish a system for responding to an accident or injury requiring hospitalization or resulting in death, and an incident involving fire damage, natural disaster or a threat to security that substantially interrupts the delivery of services which shall include:

(a) Documenting an incident or accident in an AODE incident file; and

(b) Reporting an incident or accident to the individual who is responsible for the day to day operation of an AODE and to an outside agency according to the following:

1. An incident of child abuse or neglect in accordance with KRS 620.030; and

2. An incident of adult abuse or neglect in accordance with KRS 209.030.

(4) The policies and procedures shall establish an infection control system which shall include:

(a) A procedure for reporting, evaluating, and maintaining a record of an incident of infection in a client or any personnel which poses a substantial health risk to another person;

(b) Designating an individual within an AODE responsible for taking corrective action; and

(c) Orientation for all new personnel and annual in-service training for all personnel on infection control procedures and on specific information related to infections prevalent among alcohol and other drug abusers.

(5) The policies and procedures shall establish an emergency plan for responding to a disaster including fire and severe weather, which shall include the following requirements:

(a) An emergency plan shall be conspicuously posted in a public area of each facility;

(b) A copy of the emergency plan shall be provided to all personnel;

(c) An AODE shall provide training for all personnel on how to report a fire, extinguish a small fire, and evacuate a building; and

(d) An AODE shall conduct a fire drill in accordance with 815 KAR 10:050.]

Section 8. Clinical Staff Requirements. (1) An AODE shall ensure that all personnel receive ongoing training and supervision which enables them to carry out their job duties and the training and supervision shall be documented.

(a) A clinician shall complete a minimum of twenty (20) hours of training in alcohol and other drug abuse counseling annually.

(b) A clinical services supervisor shall complete twelve (12) hours of specialized training in clinical supervision and a case manager shall complete twelve (12) hours of specialized training in case management, within one (1) year from the effective date of this administrative regulation or within six (6) months from the date of assuming responsibility for that function, whichever is later.

(2) An AODE shall designate a clinical services supervisor with overall responsibility for treatment services who meets one (1) of the following requirements:

(a) A certified alcohol and drug counselor certified pursuant to KRS 309.080 to 309.089, who has at least two (2) years full-time clinical work experience post certification. If an academic degree is required for certification it shall be from an accredited college or university;

(b) An individual, who is licensed or certified as one (1) of the following and who meets the requirements of paragraph (c) of this subsection:

1. Physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the gov-

ernment of the United States while engaged in the performance of official duties;

2. Psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

3. Licensed psychologist licensed to practice psychology by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.050;

4. Certified psychologist with autonomous functioning certified to function without supervision, in an area specified by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.056;

5. Psychological associate certified by the Kentucky Board of Examiners of Psychology to provide a service under the supervision of a licensed psychologist in accordance with KRS 319.064;

6. Licensed clinical social worker licensed for the independent practice of clinical social work by the Kentucky Board of Examiners of Social Work in accordance with KRS 335.100;

7. Certified social worker certified by the Kentucky Board of Examiners of Social Work to provide a service under the supervision of a certified social worker licensed for independent practice of clinical social work in accordance with KRS 335.080;

8. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a masters degree in psychiatric nursing from an accredited college or university;

9. Advanced registered nurse practitioner licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314.042;

10. Licensed marriage and family therapist licensed by the Kentucky Board of Licensure of Marriage and Family Therapists in accordance with the provisions of KRS Chapter 335;

11. Certified professional counselor certified by the Kentucky Board of Certification for Professional Counselors in accordance with the provisions of KRS Chapter 335; or

12. Certified art therapist certified by the Kentucky Board of Art Therapists in accordance with the provisions of KRS 309.130;

(c) A certified or licensed professional meeting the requirements in the previous paragraph (b) of this subsection shall meet the following additional requirements:

1. Has completed eighty (80) hours of training in alcohol and other drug abuse counseling, within four (4) years immediately prior to the date of assuming responsibility as a clinician in the AODE or within two (2) years immediately after assuming responsibility as a clinician in the AODE; and

2. Has at least two (2) years work experience in the alcohol and other drug treatment field post degree.

(3) A clinical services supervisor shall sign an agreement documenting he will not supervise his spouse, spousal partner, child, stepchild, sibling, parent, stepparent, grandparent, grandchild, aunt, uncle, niece, nephew, or in-law.

(4) Staff who conduct clinical assessments, develop treatment plans, lead counseling sessions, or provide case management shall meet one (1) of the following requirements:

(a) A certified alcohol and drug counselor certified pursuant to KRS 309.080 to 309.089. If an academic degree is required for certification it shall be from an accredited college or university;

(b) An individual, who is licensed or certified as one (1) of the following and who meets the requirements of paragraph (c) of this subsection:

1. Physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;

2. Psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology,

Inc.;

3. Licensed psychologist licensed to practice psychology by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.050;

4. Certified psychologist with autonomous functioning certified to function without supervision, in an area specified by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.056;

5. Psychological associate certified by the Kentucky Board of Examiners of Psychology to provide a service under the supervision of a licensed psychologist in accordance with KRS 319.064;

6. Licensed clinical social worker licensed for the independent practice of clinical social work by the Kentucky Board of Examiners of Social Work in accordance with KRS 335.100;

7. Certified social worker certified by the Kentucky Board of Examiners of Social Work to provide a service under the supervision of a certified social worker licensed for independent practice of clinical social work in accordance with KRS 335.080;

8. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a masters degree in psychiatric nursing from an accredited college or university;

9. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314, under the supervision of an independent practitioner and with one (1) of the following combinations of education and work experience:

a. Bachelor of science in nursing from a four (4) year program from an accredited college or university and one (1) year clinical work experience in the substance abuse or mental health field;

b. Diploma graduate in nursing from a three (3) year program and two (2) years clinical work experience in the substance abuse or mental health field; or

c. Associate degree in nursing from a two (2) year program from an accredited college or university and three (3) years clinical work experience in the substance abuse or mental health field;

10. Advanced registered nurse practitioner licensed by the Kentucky Board of Nursing in accordance with KRS 314.042;

11. Licensed marriage and family therapist licensed by the Kentucky Board of Licensure of Marriage and Family Therapists in accordance with the provisions of KRS Chapter 335;

12. Certified professional counselor certified by the Kentucky Board of Certification for Professional Counselors in accordance with the provisions of KRS Chapter 335; or

13. Certified art therapist licensed by the Kentucky Board of Licensure of Art Therapists in accordance with the provisions of KRS 309.130;

(c) A certified or licensed professional meeting the requirements in the previous paragraph (b) of this subsection shall have completed eighty (80) hours of training in alcohol and other drug abuse counseling, within four (4) years immediately prior to the date of assuming responsibility as a clinician in the AODE, or within two (2) years immediately after assuming responsibility as a clinician in the AODE; or

(d) An individual with a bachelors degree or greater in any field from an accredited college or university, working under the supervision of a clinical services supervisor in accordance with subsection (2) of this section, and who is supervised according to the following:

1. Has access to a supervisor at all times and receives at least four (4) hours of face-to-face supervision monthly to include case consultation; and

2. Has all treatment plans cosigned by the clinical services supervisor.

(5) A clinical services supervisor shall develop and update annually, a written individual plan of supervision, based on an individual's skills, for a clinician who meets the requirements of subsection (4)(d) of this section. The plan of supervision shall include:

(a) Name of the clinical services supervisor and clinician;

(b) Objectives to increase clinical competency; and

(c) A dated signature of the clinical services supervisor and

clinician agreeing to the plan of supervision.

(6) A clinical services supervisor shall maintain for a clinician he supervises a record of each supervisory session which includes the date, length of the session and content of the supervision. [An AODE shall ensure that all personnel receive training which enables them to carry out their job duties, either through AODE sponsored in-service training or through an outside source. A clinician shall complete eight (8) clock hours of alcohol and drug abuse training annually.

(2) An AODE shall designate a clinical services supervisor with overall responsibility for treatment services who meets the following requirements:

(a) Has two (2) years full-time clinical work experience post certification or post degree and the qualifications for a clinician in subsection (4)(b) or (c) of this section; and

(b) Successfully completes a division approved training in clinical services supervision within one (1) year from the effective date of this administrative regulation or within six (6) months from the date of assuming responsibility for clinical supervision with the AODE, whichever is later.

(3) A clinical services supervisor shall sign a document stating he will not supervise his spouse, spousal partner, child, stepchild, sibling, parent, stepparent, grandparent, grandchild, aunt, uncle, niece, nephew, or in-law.

(4) A clinician shall be one (1) of the following:

(a) A clinical services supervisor in accordance with subsection (2) of this section;

(b) A certified alcohol and drug pursuant to KRS 309.080 to 309.089. An academic degree required for certification pursuant to KRS 309.080 to 309.089 shall be from an accredited college or university;

(c) An individual with an academic degree from an accredited college or university who completed eighty (80) clock hours of alcohol and other drug abuse training, within four (4) years immediately prior to the date of assuming responsibility as a clinician in the AODE or within two (2) years immediately after assuming responsibility as a clinician in the AODE, and is one (1) of the following:

1. Physician licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties;

2. Psychiatrist licensed under the laws of Kentucky to practice medicine or osteopathy, or a medical officer of the government of the United States while engaged in the performance of official duties, who is certified or eligible to apply for certification by the American Board of Psychiatry and Neurology, Inc.;

3. Licensed psychologist licensed to practice psychology by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.050;

4. Certified psychologist with autonomous functioning certified to function without supervision, in an area specified by the Kentucky Board of Examiners of Psychology in accordance with KRS 319.056;

5. Psychological associate certified by the Kentucky Board of Examiners of Psychology to provide a service under the supervision of a licensed psychologist in accordance with KRS 319.064;

6. Licensed social worker licensed for the independent practice of clinical social work by the Kentucky Board of Examiners of Social Work in accordance with KRS 335.100;

7. Certified social worker certified by the Kentucky Board of Examiners of Social Work to provide a service under the supervision of a certified social worker licensed for independent practice of clinical social work in accordance with KRS 335.100;

8. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314 with a master's degree in psychiatric nursing from an accredited college or university;

9. Registered nurse licensed by the Kentucky Board of Nursing in accordance with KRS Chapter 314, under the supervision of an independent practitioner and with one (1) of the following combinations of education and work experience:

a. Bachelor of science in nursing from a four (4) year program from an accredited college or university and one (1) year clinical work experience in the substance abuse or mental health field;

b. Diploma graduate in nursing from a three (3) year program and two (2) years clinical work experience in the substance abuse or mental health field; or

c. Associate degree in nursing from a two (2) year program from an accredited college or university and three (3) years clinical work experience in the substance abuse or mental health field;

10. Licensed marriage and family therapist licensed by the Kentucky Board of Licensure of Marriage and Family Therapists in accordance with the provisions of KRS Chapter 335; or

11. Certified professional counselor certified by the Kentucky Board of Certification for Professional Counselors in accordance with the provisions of KRS Chapter 335; or

(d) An individual with a bachelor's degree from an accredited college or university shall work under the supervision of a clinical services supervisor, who meets the requirements in subsection (2) of this section, according to the following:

1. Completes twenty (20) clock hours of training in alcohol and other drug abuse annually;

2. Receives daily supervision and one (1) hour of face-to-face case consultation weekly;

3. Has all treatment plans cosigned by the clinical services supervisor;

4. Has all progress notes cosigned by the clinical services supervisor during the first three (3) months of employment with an AODE; and

5. Continues to receive training and supervision in accordance with subparagraphs 1, 2 and 3 of this paragraph, unless the individual achieves the requirements in paragraphs (b) and (c) of this subsection:

(5) An AODE shall ensure that a clinician is the only individual who is assigned client cases and who performs the following:

(a) A clinical assessment;

(b) Development and implementation of a client's treatment plan; and

(c) Leads a counseling session.

(6) An individual who provides case management shall:

(a) Meet the requirements for a clinician in accordance with subsection (4) of this section; and

(b) Successfully complete a division-approved training in alcohol and other drug abuse case management within one (1) year of the effective date of this administrative regulation or within six (6) months from the date of assuming responsibility for case management services with the AODE, whichever is later.

(7) A clinical services supervisor shall develop and update annually, a written individual plan of supervision for a clinician or case manager under his supervision, which shall be based on the individual's level of skill, and shall include:

(a) Name of the clinical services supervisor and clinician or case manager;

(b) Clinician or case manager's clinical strengths and weaknesses;

(c) Goals and objectives to increase clinical competency;

(d) Length and frequency of a supervisory session; and

(e) A dated signature of the clinical services supervisor and clinician or case manager agreeing to the individual plan of supervision.

(8) A clinical services supervisor shall maintain, for a clinician or case manager he supervises, documentation of the following:

(a) A signed plan of supervision; and

(b) A record of a supervisory session to include the date, length of the session and content of the supervision.]

Section 9. Client Rights. (1) An AODE shall have written policies and procedures to ensure that the rights of a client are protected while participating in a treatment program.

(2) An AODE shall conspicuously post in a public area of each facility a notice of client rights, which shall include the address and telephone number of the AODE's and the cabinet's ombudsperson. If [When] there is only one (1) individual working in the AODE, a notice of client rights shall include [only] the address and telephone number of the cabinet's ombudsperson.

(3) A client shall not be unlawfully discriminated against in determining eligibility for a treatment program.

(4) During a program's intake procedures[,] a client shall sign a client rights statement[,] which specifies [shall be placed in the client's record, and shall specify] a client has the right to:

(a) Give informed consent to receive a service [treatment].

1. An adult shall sign an informed consent to receive a service

[treatment].

2. A juvenile, or the parent or guardian of a juvenile, shall sign an informed consent for a juvenile to receive a service [treatment] in accordance with KRS 222.441;

(b) Have input into his treatment, case management or referral plan and be informed of its content;

(c) Receive individualized treatment;

(d) File a grievance, recommendation or opinion regarding the services he receives [his treatment];

(e) Give informed written consent regarding participation in a research study with the exception of a juvenile whose parent or guardian shall give informed written consent;

(f) Confidentiality [Confidential treatment] according to the following:

1. A federally-assisted AODE [agency] in accordance with 908 KAR 1:320; or [and]

2. A nonfederally-assisted AODE [agency] in accordance with KRS 222.271(1);

(g) Request a written statement of the charge for a service and be informed of the policy for the assessment and payment of fees;

(h) Be informed of the rules of client conduct, including the consequences for the use of alcohol and other drugs or other infractions that may result in disciplinary action or discharge;

(i) Be treated with consideration, respect, and personal dignity;

(j) Review his client record in accordance with AODE policy; and

(k) Receive one (1) free copy of his client record in accordance with KRS 422.317.

(5) A [residential] program providing twenty-four (24) hour care shall also specify on the client rights statement that a client has the right to:

(a) Vote in a political election;

(b) Reasonable accommodations to afford privacy in bathing and toileting; and

(c) Privileges in accordance with KRS 222.271(2).

(6) If exercising a client right is contraindicated by a client's physical or mental condition, there shall be documentation in a client record of the reason for the restriction and of the explanation given to a client.

Section 10. Program Operations. (1) An AODE shall have a written description for each program which shall include philosophy, mission statement, goals and objectives and staffing.

(2) Admission, readmission, discharge, and transfer criteria and procedures for making a referral within or outside an AODE shall be established in writing and include the categories of individuals accepted and not accepted into a program.

(3) When a client has a need for a service listed in paragraphs (a)-(i) of this subsection, identified in his treatment plan, case management plan or referral plan, the AODE shall provide the service directly if the AODE is a qualified provider of the service or through referral to an appropriately licensed, certified or accredited provider.

(a) Physical health services including tuberculosis skin testing, human immunodeficiency virus testing and counseling, prenatal care, dental care, and primary care.

(b) Mental health, mental retardation and developmental disability services.

(c) Visual, speech or hearing disability services.

(d) Primary, secondary, and special education in accordance with state and local laws and regulations.

(e) Preparation for a general education development equivalency certificate or other adult education.

(f) Vocational rehabilitation.

(g) Services to an individual convicted of driving under the influence in accordance with 908 KAR 1:310.

(h) Training in daily living skills.

(i) Case management services to include the development of a written case management plan signed by a client, which includes an assessment of a client's need for a service and strategies for obtaining a service, and which may be included in a client's treatment plan.

(4) An AODE which provides services to juveniles shall have written policies and procedures to ensure the following:

(a) Services and educational materials shall be age appropriate; and

(b) With the written consent of a juvenile, the family shall be involved in a juvenile's treatment to the extent possible and appropriate.

(5) An AODE shall have a uniform client record system for each program which shall include the following requirements:

(a) A separate legible written or electronic record shall be maintained for each client and shall be:

1. Retained for five (5) years from the last date of service for an adult client age eighteen (18) and over;

2. Retained until age twenty-one (21) for a client who received a service under age eighteen (18), or for five (5) years from the last date of a service, whichever is longer;

3. Stored in a locked cabinet and accessible only to authorized personnel; and

4. Kept confidential according to the following:

a. A federally assisted AODE in accordance with 908 KAR 1:320; or

b. A nonfederally-assisted AODE in accordance with KRS 222.271(1);

(b) A client record shall include:

1. Application for admission;

2. Psychosocial and a health status questionnaire or a copy of a physical health examination except in a detoxification program;

3. Supplemental assessments and evaluations when available;

4. Consent form, fee agreement, and client rights statement, each signed by the client;

5. Treatment plan or in a detoxification program either a treatment plan or a standard treatment protocol and in a halfway house a referral plan;

6. Case management plan if separate from the treatment plan;

7. Aftercare plan;

8. Progress notes;

9. Authorization for release of information signed by a client, according to the following:

a. A federally assisted AODE in accordance with 908 KAR 1:320; or

b. A nonfederally-assisted AODE in accordance with KRS 222.271(1);

10. Discharge summary;

(c) An entry in a client record shall include a signature and credential of the individual who delivered a service and the date a service was provided; and

(d) Procedure for destroying a client record after the required period of retention to include:

1. A written record shall be burned or shredded; and

2. An electronic record shall be destroyed according to the following:

a. An AODE shall designate an individual as a computer security administrator who shall approve the destruction of electronic data to ensure the information has been deleted and is unrecoverable;

b. Information shall be deleted from magnetic media by complete degaussing, electronic overwriting, or physical destruction by shredding; and

c. Magnetic media which has been through a deletion process, with the exception of physical destruction by shredding, shall be tested periodically to validate the continued effectiveness of the deletion.

(6) An AODE shall have a written client grievance procedure to include the following requirements:

(a) Identification of an AODE ombudsperson;

(b) A process for filing a written client grievance;

(c) An appeals process with time frames for filing and responding to a grievance in writing;

(d) Protection for a client from interference, coercion, discrimination, or reprisal;

(e) Conspicuously posting in a public area of each facility grievance procedures informing a client of:

1. A right to file a grievance;

2. A process for filing a grievance; and

3. The address and telephone number of the AODE's and

cabinet's ombudsperson except in an AODE where only one (1) individual is working, the notice shall contain the address and telephone number of the cabinet's ombudsperson;

(f) An AODE ombudsperson shall document a grievance in a central AODE client grievance file; and

(g) An AODE ombudsperson shall refer a grievance regarding an allegation of abuse or neglect to an appropriate authority in accordance with:

1. KRS 209.030 regarding the abuse or neglect of an adult; or

2. KRS 620.030 regarding the abuse or neglect of a child.

(7) An AODE shall conspicuously post a fee schedule in a public area of each facility.

(8) If alcohol or drug testing is conducted as part of assessment, treatment, or discharge there shall be written policies and procedures outlining the screening process and the consequences for testing positive.

(9) An AODE shall have a written policy governing the use of alcohol and other drugs by a client or visitors while in the program. [An AODE shall have a written description for a program which shall include:

(a) Philosophy, mission statement, goals and objectives;

(b) Client population served including age groups and services provided;

(c) Staffing patterns outlined on an organizational chart showing job positions, titles, and a line of authority except when there is only one (1) individual working in the AODE;

(d) Admission and readmission criteria;

(e) Intake procedure;

(f) Discharge and transfer criteria and procedures; and

(g) Procedure for making a referral within or outside an AODE including a list of agencies having a written referral agreement with the AODE.

(2) An AODE shall have the following written policies and procedures regarding referral arrangements made for a client when a special need is identified in his treatment plan:

(a) Any client responsibilities for payment of services;

(b) Referral arrangements shall be documented in the client record; and

(c) When a client has a special need for one (1) of the following services, the AODE shall either provide the service directly or through referral. The service shall be delivered by an appropriately licensed, certified or accredited provider.

1. Physical health services including tuberculosis skin testing, human immunodeficiency virus testing and counseling, prenatal care, dental care, physical examination and other primary care services.

2. Mental health, mental retardation and developmental disability services.

3. Emergency medical services including a written agreement with outside medical resources and notification of the emergency contact person on a client's admission application.

4. Visual, speech or hearing disability services including auxiliary aids which make communication accessible to the client in accordance with the Americans with Disabilities Act, 42 USC 12101 et seq.

5. Primary, secondary, and special education in accordance with state and local laws and regulations.

6. Preparation for a general education development equivalency certificate or other adult education.

7. Vocational rehabilitation.

8. Services to an individual convicted of driving under the influence in accordance with 908 KAR 1:310.

9. Training in daily living skills.

10. Case management services to include:

a. The development of a written case management plan signed by a client which includes an assessment of a client's need for a service, identification of community resources and strategies for obtaining a service; and

b. Assignment of a case manager who shall be responsible for assisting a client in obtaining a community service, monitoring a client's progress and advocating on behalf of a client to obtain a service or to promote the development of a service.

(3) An AODE shall have written policies and procedures for services to juveniles which include the following:

(a) Services and educational materials shall be age appropriate;



and

(b) With the written consent of a juvenile, the family shall be involved in a juvenile's treatment, and documentation of an attempt to involve the family shall be included in a client record.

(4) An AODE shall ensure that a clinical service is delivered in a private area, where others who are not participating in the service, will be unable to hear the content of a conversation during the delivery of a service.

(5) An AODE shall have a uniform client record system for a program which shall include the following requirements:

(a) A separate legible written or electronic record shall be maintained for a client and shall be:

1. Retained for five (5) years from the last date of service for an adult client age eighteen (18) and over;

2. Retained until age twenty-one (21) for a client who received a service under age eighteen (18), or for five (5) years from the last date of a service, whichever is longer;

3. Stored in a locked cabinet and accessible only to authorized personnel; and

4. Kept confidential according to the following:

a. A federally-assisted agency in accordance with 908 KAR 1:320;

and

b. A nonfederally-assisted agency in accordance with KRS 222.271(1);

(b) A client record shall include:

1. Application for admission;

2. Psychosocial assessment, health status questionnaire or a copy of a physical health examination. A detoxification program is exempt from this standard;

3. Supplemental assessment and evaluation when available;

4. Consent to treatment, fee agreement, and client rights statement, each signed by a client;

5. Treatment plan or in a detoxification program either a treatment plan or a treatment plan protocol;

6. Case management plan signed by a client. A detoxification program is exempt from this standard;

7. Aftercare plan signed by a client. A detoxification program and an outpatient treatment program are exempt from this standard;

8. Progress notes;

9. Report from an outside agency or an individual when available;

10. Authorization for release of information signed by a client, according to the following:

a. A federally-assisted agency in accordance with 908 KAR 1:320;

and

b. A nonfederally-assisted agency in accordance with KRS 222.271(1); and

11. Discharge summary;

(c) An entry in a client record shall include a signature and credential of the individual who delivered a service and the date a service was provided; and

(d) Procedure for destroying a client record after the required period of retention to include:

1. A written record shall be burned or shredded; and

2. An electronic record shall be destroyed according to the following:

a. An AODE shall designate an individual as a computer security administrator who shall approve the destruction of electronic data to ensure the information has been deleted and is unrecoverable;

b. Information shall be deleted from magnetic media by complete degaussing, electronic overwriting, or physical destruction by shredding; and

c. Magnetic media which has been through a deletion process, with the exception of physical destruction by shredding, shall be tested periodically to validate the continued effectiveness of the deletion.

(6) An AODE shall have a written client grievance procedure to include the following requirements:

(a) Identification of an AODE ombudsperson;

(b) A process for filing a written client grievance;

(c) An appeals process with time frames for filing and responding to a grievance in writing;

(d) Protection for a client from interference, coercion, discrimination, or reprisal;

(e) Conspicuously posting in a public area of a facility a notice informing a client of:

1. A right to file a grievance;

2. A process for filing a grievance; and

3. An address and telephone number of the AODE's and cabinet's ombudsperson;

(f) An AODE ombudsperson shall document a grievance in a central AODE client grievance file; and

(g) An AODE ombudsperson shall refer a grievance regarding an allegation of abuse or neglect to an appropriate authority in accordance with:

1. KRS 209.030 regarding the abuse or neglect of an adult; and

2. KRS 620.030 regarding the abuse or neglect of a child;

(7) An AODE shall have a written policy regarding client fees to include:

(a) A fee schedule shall be conspicuously posted in a public area of a facility; and

(b) There shall be a policy for setting and collecting client fees;

(8) If an AODE requires a client to be screened for the presence of alcohol or other drugs there shall be written policies and procedures regarding the taking and testing of a blood and urine sample, chain of custody, confidentiality of a sample and a result, and any consequences if a client tests positive;

(9) An AODE shall have a written policy governing the use of alcohol and other drugs by a client, or a visitor while in the program.]

Section 11. Detoxification Program. In addition to the standards in Sections 1 through 10 of this administrative regulation, the following standards shall be met in a detoxification program.

(1) At admission, a client shall receive an assessment [in accordance with an assessment protocol, developed in consultation with a physician, and documented in a client record] to determine if a client is intoxicated or in withdrawal, the severity of a client's physical and mental condition, and a need for emergency medical care. The assessment shall be in accordance with an assessment protocol developed in consultation with a physician and documented in the client's record.

(2) Within twenty-four (24) hours of admission, the following information shall be obtained from a client and documented in a client record:

(a) Client identifying and demographic information;

(b) Emergency contact person;

(c) Presenting problem;

(d) History of alcohol and other drug use including problems and previous treatment related to the abuse of alcohol or [and] other drugs;

(e) History and previous treatment for a physical problem including delirium tremens, seizures, heart disease, liver disease, and infectious disease including tuberculosis, hepatitis, and human immunodeficiency virus;

(f) History and previous treatment for a mental health problem, mental retardation, and a developmental disability;

(g) Assessment of pregnancy [status] based on a client's self-report or a pregnancy test; and

(h) Signed consent to treatment.

(3) A reason for not obtaining the information in subsection (2) of this section, within twenty-four (24) hours, shall be documented in a client record.

(4) A written treatment plan based on the assessment shall be completed for a client within forty-eight (48) hours of admission, revised as new information is received, [documented in a client record] and include:

(a) Presenting problem;

(b) Identification of a client problem;

(c) Type of service to be provided including [a] referrals [within or outside the AODE];

(d) Criteria for discharge;

(e) Staff person primarily responsible for coordinating a client's care; and

(f) Client's signature [Documentation that a treatment plan has been explained to a client and the extent to which a client agrees with the plan].

(5) A treatment plan protocol may be used in place of an individualized treatment plan and any exception to the protocol shall be documented in a client record.

(6) A progress note shall[



(a) be recorded ~~[in a client record]~~ following the delivery of a professional service and

(b) include the [a] service provided, an observation of the client's behavior and response to the [a] service, and the [a] client's progress toward meeting the goals and objectives of the [a] treatment plan.

(7) An aftercare [discharge] plan shall be developed with a client's participation ~~[, documented in a client record,]~~ and include a referral to:

(a) alcohol and other drug abuse treatment or ~~[at an appropriate level of care;~~

(b) A self-help group specific to addiction recovery; and

(c) a community service which may include a self-help group, housing, medical, and social services needed by the client.

(8) A discharge summary shall be completed within thirty (30) calendar days of discharge ~~[, documented in a client record,]~~ and include:

(a) Date of admission and discharge;

(b) Presenting problem;

(c) Summary of treatment and response to treatment; and

(d) Referrals made to another organization or provider.

(9) The pulse ~~[, temperature,]~~ and blood pressure of a client shall be monitored three (3) times daily ~~[in accordance with an AODE protocol, developed in consultation with a physician]~~ and documented in a client record.

(10) A client shall receive daily counseling, education, and orientation to self-help groups specific to addiction recovery, as soon as he is physically and mentally capable, with a primary focus on motivating a client to continue in treatment after discharge.

(11) A client shall be provided an opportunity to meet with a self-help group and other outside service providers as soon as he is physically and mentally capable.

(12) There shall be written policies and procedures on the use of medication by a client which shall include:

(a) Prescription and over-the-counter medication brought with a client shall be recorded in a client's record upon admission;

(b) A policy on self-administration of an over-the-counter medication to include the identification of medication which ~~[shall]~~ requires physician approval prior to use by a client;

(c) A program shall obtain written consent from a client, to verify with a physician that a prescription or an over-the-counter medication described in paragraph (b) of this subsection is not contraindicated with the [a] treatment plan, and the verification shall be documented in the [a] client record;

(d) Prescription and over-the-counter medication shall be stored in a locked, secure location inaccessible to a client;

(e) Medication shall ~~[only]~~ be available to a client only at the time it is scheduled to be taken according to a prescription or as directed on the [a] label; and

(f) Self-administration of prescription and over-the-counter medication shall be documented in a client record and include:

1. Name of the medication;

2. Date and time of self-administration;

3. Dosage and amount of medication; and

4. Name of a staff person who monitored the self-administration of the [a] medication.

(13) Food services shall be provided according to the following:

(a) Meals shall be provided in accordance with 902 KAR 45:005;

(b) There shall be documentation that meal planning is approved by a registered dietician;

(c) A client with a special dietary requirement shall be provided food to meet his needs and the special dietary requirement shall be documented in a client record;

(d) A client shall receive three (3) meals daily with no more than a fifteen (15) hour span between an evening meal and breakfast; and

(e) Snacks shall be provided.

(14) Staffing:

(a) A program shall be staffed twenty-four (24) hours a day, seven (7) days a week, and ~~[an AODE shall ensure that]~~ staff shall include:

(a) [1:] A program manager, supervisor or coordinator;

(b) [2:] At least two (2) staff per shift with one (1) trained in crisis intervention, cardiopulmonary resuscitation and standards first aid [emergency procedures]; and

(c) [3:] Sufficient staff to meet client needs twenty-four (24) hours

a day based on the number of clients, the need for assistance by clients, and the type of services delivered. If there are multiple twenty-four (24) hour programs operated in the same facility, the staff of all programs may be used to meet the staffing requirements.

~~[(b) If there are multiple twenty-four (24) hour programs operated in the same facility, the staff of all programs may be used to meet the staffing requirements.]~~

(15) Before working alone [Training shall be provided according to the following:

(a) Within three (3) months of the date of employment,] a staff person shall be trained in:

(a) [1:] Monitoring the vital signs of pulse ~~[, temperature,]~~ and blood pressure;

(b) [2:] Crisis intervention; and

(c) A minimum of twelve (12) hours of training in [3:] cardiopulmonary resuscitation, in accordance with 902 KAR 13:050, [Section 7;] and

[4:] standard first aid conducted by a certified [an] instructor; [certified by the American Red Cross; and

(b) Within one (1) year of the date of employment a staff person shall be trained in:]

(d) [1:] The recognition of [a] problems associated with alcohol and other drug use; [a] symptoms requiring referral for emergency care; degree of intoxication; [the] stages of withdrawal; and the [a] physical or mental complications that may occur at each stage;

(e) [2:] Techniques for motivating a client to continue in treatment after discharge;

(f) [3:] Local and state resources including the [a] procedure for making a client referral; and

(g) [4:] Effects of alcohol and other drug use on a pregnant woman and her fetus including special detoxification needs during pregnancy, and recognition of when to refer a pregnant client for medical detoxification.

Section 12. Residential [Treatment] Program. In addition to the standards in Sections 1 through 10 of this administrative regulation, the following standards shall be met in a residential program.

(1) At intake, client identifying and demographic information, emergency contact person, and presenting problem shall be obtained from a client.

(2) An assessment shall be completed on each client and include:

(a) A psychosocial which shall include presenting problem; history and treatment of alcohol and other drug abuse; current living arrangement; family relationships; legal, employment, military, educational and vocational history; peer group relationships; religious background and practices; history and treatment of mental retardation, a developmental disability or a mental health problem including emotional, physical and sexual abuse; ethnic and cultural background; leisure and recreational activities; client strengths and limitations; and diagnostic impression;

(b) A mental status examination which shall include a client's current mental condition including the identification of an abnormality in behavior, affect, thought, memory, orientation and contact with reality;

(c) Completion of a physical health status questionnaire, which has been developed in consultation with a physician, and includes at least:

1. History of medical problems;

2. Client's self-report on current status of pregnancy, tuberculosis, hepatitis and human immunodeficiency virus;

3. Use of prescription and over-the-counter medication;

4. Allergies; and

5. Identification of a medical condition that may affect the client's participation in treatment; and

(d) A diagnostic summary based on an analysis of all information from the client's assessment and which includes a recommended course of treatment.

(3) A written individualized treatment plan based on the assessment shall be developed for each client with the client's participation within six (6) calendar days of admission and include diagnosis; a client's problem; goals, measurable objec-

tives and criteria for discharge; duration, frequency and type of service to be provided; referrals; staff person primarily responsible for developing the treatment plan and the client's signature.

(4) A treatment plan and a client's progress shall be reviewed by a clinical staff person and the client every two (2) weeks and be documented in the client's record.

(5) Alcohol and other drug abuse counseling, including a focus on relapse prevention, shall be provided to each client and if provided in a group there shall be a maximum of fifteen (15) clients per clinician.

(6) Education shall be provided to each client on the effects of alcohol and other drug abuse, the disease and recovery from alcoholism and other drug dependency, consistent with the client's treatment plan.

(7) Orientation to self-help groups specific to addiction recovery shall be provided to each client.

(8) A variety of organized recreational activities shall be provided to each client, under the direction of staff and be part of the client's schedule.

(9) A written aftercare plan shall be developed for each client with the client's participation, be based on a client's needs at discharge, and include activities and referrals supporting recovery from alcohol and other drug abuse.

(10) A client shall have access to films, printed materials, and audio and video tapes related to the treatment of alcohol and other drug abuse.

(11) Information or education about alcoholism and other drug dependency and recovery shall be made available to a client's family or significant other and if a service is requested it shall be provided either directly or through referral to a qualified outside provider.

(12) A client shall receive forty (40) hours of structured activities weekly including alcohol and other drug abuse education; individual, group or family counseling; self-help group meetings and recreation. Ten (10) of the forty (40) hours of structured weekly activities shall be counseling services.

(13) A progress note which includes the service provided, an observation of a client's behavior and response to the service and a client's progress toward meeting the goals and objectives of the treatment plan shall be recorded after an individual counseling session, and weekly in a summary note if a client receives multiple services.

(14) A discharge summary shall be completed within thirty (30) calendar days of discharge and include the date of admission and discharge, presenting problem, diagnosis, summary of treatment and response to treatment and referrals made to another organization or provider.

(15) A client shall be provided an opportunity to meet with a self-help group and other outside service providers.

(16) If a client performs work in a program, other than a personal care or housekeeping task, which is part of a therapeutic activity, the work shall be voluntary and consistent with his treatment plan.

(17) There shall be written policies and procedures on the use of medication by a client which shall include:

(a) Prescription and over-the-counter medication brought with a client shall be recorded in the client's record upon admission;

(b) A policy on self-administration of over-the-counter medication to include the identification of medication which requires physician approval prior to use by a client while in the program;

(c) A program shall obtain written consent from a client, to verify with a physician that a prescription or an over-the-counter medication described in paragraph (b) of this subsection is not contraindicated with the client's treatment plan, and the verification shall be documented in the client's record;

(d) Prescription and over-the-counter medication shall be stored in a locked and secure location inaccessible to clients;

(e) Medication shall be available to a client only at the time it is scheduled to be taken according to a prescription or as directed on the label; and

(f) Self-administration of prescription and over-the-counter

medication shall be documented in the client's record and include name of the medication, date and time of self-administration, dosage and amount of medication, and name of the staff person who monitored the self-administration of the medication.

(18) Food services shall be provided according to the following:

(a) Meals shall be provided in accordance with 902 KAR 45:005;

(b) There shall be documentation that meal planning is approved by a registered dietician;

(c) There shall be documentation that a client involved in preparing meals for other clients receives orientation in health and safety issues related to food preparation and that staff provides periodic monitoring;

(d) A client with a special dietary requirement shall be provided food to meet his needs and the special dietary requirement shall be documented in the client's record;

(e) A client shall receive three (3) meals daily with no more than a fifteen (15) hour span between an evening meal and breakfast; and

(f) Snacks shall be available.

(19) A program shall be staffed twenty-four (24) hours a day, seven (7) days a week, and staff shall include:

(a) A program manager, supervisor or coordinator;

(b) Staffing capability to ensure that an appropriate staff person is responsible for managing a program in the absence of a program manager, supervisor or coordinator; and

(c) Sufficient staff to meet client needs twenty-four (24) hours a day based on the number of clients, the need for assistance by clients, and the type of services delivered. If there are multiple twenty-four (24) hour programs operated in the same facility, the staff of all programs may be used to meet staffing requirements.

(20) There shall be at least one (1) staff person on duty at all times, who has completed training in crisis intervention and a minimum of twelve (12) hours of training in standard first aid, which includes cardiopulmonary resuscitation in accordance with 902 KAR 13:050, and is conducted by a certified instructor. [In addition to the standards in Sections 1 through 10 of this administrative regulation, the following standards shall be met for a residential treatment program:

(1) At intake, client identifying and demographic information, emergency contact person, and presenting problem shall be obtained from a client.

(2) A client shall receive the following services:

(a) An assessment which includes:

1. A psychosocial which shall include:

a. Presenting problem;

b. History of alcohol and drug use including previous treatment;

c. Current living arrangement including information regarding exposure to an individual who is engaging in the unhealthy or illegal use of alcohol or other drugs;

d. Family relationships including childhood and marital history, custody of children, sexual identity and partner relationship where indicated;

e. Legal history;

f. Employment and military service history;

g. Education and vocational history;

h. Social and peer group relationships;

i. Religious background and practices;

j. History and treatment of mental retardation, a developmental disability and a mental health problem including emotional, physical and sexual abuse;

k. Ethnic and cultural background;

l. Leisure and recreational activities;

m. Client strengths and limitations; and

n. Diagnostic impression;

2. An evaluation of a client's current mental condition including an identification of an abnormality in behavior, affect, thought, memory, orientation, and contact with reality;

3. A copy of a physical examination completed by a medical professional within ninety (90) days of admission or completion of a physical health status questionnaire which has been developed in

consultation with a physician and includes:

- a. Review of body systems;
  - b. Surgery and treatment history;
  - c. Current medical condition;
  - d. Assessment of pregnancy status based on a client's self-report or a pregnancy test;
  - e. Assessment of tuberculosis, hepatitis and human immunodeficiency virus status;
  - f. Prescription and over-the-counter medication;
  - g. Allergies including an allergic reaction to a medication; and
  - h. Identification of a medical condition that may affect a client's participation in treatment;
4. Information from a written report regarding a previous assessment and treatment if available; and
5. A diagnostic summary including an analysis of all assessment information and a recommended course of treatment;

(b) Treatment planning which includes:

1. A written individualized treatment plan based on an assessment shall be developed for a client within six (6) calendar days of admission and shall include:

- a. Diagnosis;
- b. Identification of a client's problem;
- c. Goals, measurable objectives and criteria for discharge;
- d. Duration, frequency and type of service to be provided including a referral within or outside an AODE;
- e. Staff person primarily responsible for implementing a treatment plan; and
- f. Date for treatment plan review;

2. There shall be documentation in a client record that a treatment plan has been explained to a client and the extent to which a client agrees with the plan; and

3. Case review of a treatment plan and a client's progress shall be conducted every two (2) weeks and documented in a client record;

(c) Alcohol and other drug abuse counseling shall be provided according to the following:

1. There shall be a focus on problems related to alcohol and other drug abuse;

2. There shall be individual counseling, group counseling, or family counseling; and

3. A counseling service provided in a group shall have a maximum of fifteen (15) clients;

(d) Education on the effects of alcohol and other drug abuse, the disease and recovery from alcoholism and other drug dependency, consistent with a client's treatment plan;

(e) Orientation to self-help groups specific to addiction recovery;

(f) A variety of organized recreational activities which shall be under the direction of staff and part of a client's schedule;

(g) Relapse prevention which includes:

1. A written relapse prevention plan shall be developed for a client who completes treatment; and

2. A copy shall be given to a client and a summary of a relapse prevention plan shall be included in a client record as part of a progress note, discharge summary or aftercare plan; and

(h) Aftercare planning which shall include a written aftercare plan developed with a client's participation, based on a client's need at discharge, which includes activities supporting recovery from alcohol and other drug abuse, and a referral for continuing care.

(3) A client shall have access to films, printed materials, and audio and video tapes related to the treatment of alcohol and other drug abuse and recovery from alcoholism and other drug dependencies.

(4) Information or education about alcoholism and other drug dependency and recovery shall be made available to a client's family or significant other and if a service is requested it shall be provided either directly by an AODE or through referral to a qualified outside provider.

(5) A client shall receive forty (40) hours of structured activities weekly which include alcohol and other drug abuse education; individual, group or family counseling; self-help group meetings specific to addiction recovery; and recreation. Ten (10) of the forty (40) hours of structured weekly activities shall be counseling services.

(6) A progress note shall be recorded:

(a) Following the delivery of an individual counseling session and include a service provided, an observation of a client's behavior and response to the service, and a client's progress toward meeting the

goals and objectives of the treatment plan; or

(b) Weekly, in a summary note, following the delivery of multiple services, with the exception of an individual counseling session, which shall be recorded in accordance with paragraph (a) of this subsection. A weekly summary note shall identify the services provided to a client during the week, a client's behavior and response to the services, and a client's progress toward meeting the goals and objectives of a treatment plan.

(7) A discharge summary shall be completed within thirty (30) calendar days of discharge and include:

(a) Date of admission and discharge;

(b) Presenting problem;

(c) Diagnosis;

(d) Summary of treatment and response to treatment; and

(e) Referral made to another organization or provider.

(8) A client shall be provided an opportunity to meet with a self-help group and other outside service providers.

(9) If a client performs work in a program, other than a personal care or housekeeping task, which is part of a therapeutic activity, the work shall be voluntary and consistent with his treatment plan.

(10) There shall be written policies and procedures on the use of medication by a client which shall include:

(a) Prescription and over-the-counter medication brought with a client shall be recorded in a client's record upon admission;

(b) A policy on self-administration of an over-the-counter medication to include the identification of medication which shall require physician approval prior to use by a client;

(c) A program shall obtain written consent from a client, to verify with a physician that a prescription or an over-the-counter medication described in paragraph (b) of this subsection, is not contraindicated with a treatment plan, and the verification shall be documented in a client record;

(d) Prescription and over-the-counter medication shall be stored in a locked, secure location inaccessible to a client;

(e) Medication shall only be available to a client at the time it is scheduled to be taken according to a prescription or as directed on a label; and

(f) Self-administration of prescription and over-the-counter medication shall be documented in a client record and include:

1. Name of the medication;

2. Date and time of self-administration;

3. Dosage and amount of medication; and

4. Name of a staff person who monitored the self-administration of a medication.

(11) Food services shall be provided according to the following:

(a) Meals shall be provided in accordance with 902 KAR 45:005;

(b) There shall be documentation that meal planning is approved by a registered dietician;

(c) A client involved in preparing meals shall be monitored by a staff person and there shall be documentation that a client receives orientation in health and safety issues related to food preparation;

(d) A client with a special dietary requirement shall be provided food to meet his needs and the special dietary requirement shall be documented in a client record;

(e) A client shall receive three (3) meals daily with no more than a fifteen (15) hour span between an evening meal and breakfast; and

(f) Snacks shall be available.

(12) Staffing:

(a) A program shall be staffed twenty-four (24) hours a day, seven (7) days a week, and an AODE shall ensure that staff include:

1. A program manager, supervisor or coordinator;

2. At least one (1) staff person trained in emergency procedures per shift; and

3. Sufficient staff to meet client needs twenty-four (24) hours a day based on the number of clients, the need for assistance by clients, and the type of services delivered.

(b) If there are multiple twenty-four (24) hour programs operated in the same facility, the staff of all programs may be used to meet staffing requirements.

(13) Within three (3) months of the date of employment, a staff person shall be trained in crisis intervention, cardiopulmonary resuscitation in accordance with 902 KAR 13:050, Section 7, and standard first aid conducted by an instructor certified by the American Red Cross.]

Section 13. Family Residential [Treatment] Program. In addition to the standards in Sections 1 through 10 and 12 of this administrative regulation, the following standards shall be met for a family residential treatment program.

(1) [A family residential treatment program shall meet the standards for a residential treatment program in Section 12 of this administrative regulation.

(2) A client with a need identified in a treatment plan shall receive training on parenting.

(2) There [(3) An AOBE] shall be [have] written policies on children to include:

(a) Maximum number of children [who are] permitted to reside in the facility at one (1) time;

(b) Age of children [who are] permitted to reside in the facility;

(c) A client shall sign a statement outlining his [client's] responsibility for his children while in the facility to include:

1. A client shall have primary responsibility for ensuring that a child's needs are met regarding food, clothing, hygiene, safety, discipline, supervision and follow-up on a referral to a community resource for the children who reside with him in the facility; [and]

2. A client shall make prior arrangements for the care of his children if [in the event] he leaves the facility without his children, with [or without] staff approval; and

3. A client shall identify, in writing, an emergency contact person, who will be responsible for the care of his children if he leaves the facility without staff approval, and

[(d) A client shall sign a statement agreeing to the policies in paragraph (c) of this subsection and the statement shall be included in a client's record;

(e) An AOBE shall contact the Cabinet for Families and Children shall be contacted [-] if the [an individual] designated individual [by a client as responsible for the care of his children in his absence,] is not located; and

(d) [(f)] A client shall have access to milk and baby formula for his children at all times.

(3) [(4)] A client's children shall receive the following services:

(a) [A physical health, mental health, mental retardation and developmental disability screening to determine the need for a referral to an outside qualified provider;

(b) A written case management plan[-, which shall be] developed within six (6) calendar days of admission with a child's participation to the extent possible and signed by the parent, which is updated monthly and includes [-]

1- Identified service needs and [for a service];

2- Identification of community resources;

3- strategies and referrals for obtaining [a] services;

4- Name of a case manager who shall be responsible for assisting a parent in obtaining a community service for his child; and

5- Signature of the parent residing with the child in the facility;]

(b) [(e)] Education about the effect on a family and children when a parent or a parent's partner abuses alcohol or other drugs;

(c) [(d)] A variety of organized recreational activities which shall be under the direction of staff and posted on a schedule;

(d) Day [(e) Child] care in a program licensed by the cabinet if a need is identified; and

(e) [(f)] Primary, secondary or special education in accordance with state and local laws and regulations if a need is identified.

(4) There shall be [(5) An AOBE shall maintain] a separate record [for a client and] for each child residing with a client in a facility which includes the following information:

(a) Child's identifying and demographic information;

(b) Dates the child enters and leaves the program;

(c) Case management plan;

(d) Prescription and over-the-counter medication brought by the parent for a child's use while residing in the facility;

(e) Name of the medication, date and time of self-administration, dosage and amount of medication, and the name of the staff person who monitored the self-administration of the medication to the child; and

(f) Any limitations a child has that will prevent participation in an activity.

(5) There shall be sufficient staff to provide the following services to children: [(6) In addition to the staff requirements in

Section 12 of this administrative regulation, a program shall have a staff person designated as:]

(a) Coordination of child-parent [A children and family] services [coordinator];

(b) Recreation; [A recreational leader]; and

(c) Case management. [A case manager.]

Section 14. Residential Transitional Living Program. In addition to the standards in Sections 1 through 10 of this administrative regulation, the following standards shall be met in a residential transitional living program if staff provide counseling on site.

(1) At intake, client identifying and demographic information, emergency contact person, and presenting problem shall be obtained from a client.

(2) An assessment shall be completed on each client and include:

(a) A psychosocial which shall include presenting problem; history and treatment of alcohol and drug abuse; current living arrangement; family relationships; legal, employment, military, educational, and vocational history; peer group relationships; religious background and practices; history and treatment of mental retardation, a developmental disability or a mental health problem including emotional, physical and sexual abuse; ethnic and cultural background; leisure and recreational activities; client strengths and limitations; and diagnostic impression;

(b) A mental status examination which shall include a client's current mental condition including the identification of an abnormality in behavior, affect, thought, memory, orientation, and contact with reality;

(c) Completion of a physical health status questionnaire, which has been developed in consultation with a physician, and includes at least:

1. History of medical problems;

2. Client's self-report on current status of pregnancy, tuberculosis, hepatitis and human immunodeficiency virus;

3. Use of prescription and over-the-counter medication;

4. Allergies; and

5. Identification of a medical condition that may affect a client's participation in treatment; and

(d) A diagnostic summary based on an analysis of all information from the client's assessment and which includes a recommended course of treatment.

(3) A written individualized treatment plan based on the assessment shall be developed for each client with the client's participation within seven (7) calendar days of admission and include diagnosis; a client's problem; goals, measurable objectives and criteria for discharge; duration, frequency and type of service to be provided; referrals; staff person primarily responsible for developing the treatment plan; and the client's signature.

(4) A treatment plan and a client's progress shall be reviewed by a clinical staff person and the client monthly and be documented in the client's record.

(5) Alcohol and other drug abuse counseling, including a focus on relapse prevention, shall be provided to each client and if provided in a group there shall be a maximum of fifteen (15) clients per clinician.

(6) Orientation to self-help groups specific to addiction recovery shall be provided to each client.

(7) A written aftercare plan shall be developed for each client with the client's participation, be based on a client's needs at discharge, and include activities and referrals supporting recovery from alcohol and other drug abuse.

(8) A progress note which includes the service provided, an observation of a client's behavior and response to the service, and a client's progress toward meeting the goals and objectives of the treatment plan shall be recorded after an individual counseling session, and weekly in a summary note if a client receives multiple services.

(9) There shall be documentation in a client's record that the client is either employed; pursuing employment; participating in vocational education, training or rehabilitation; or is receiving a disability benefit.

(10) A discharge summary shall be completed within thirty (30) calendar days of discharge and include the date of admission and discharge, presenting problem, diagnosis, summary of treatment and response to treatment, and referrals made to another organization or provider.

(11) A client shall be provided an opportunity to meet with a self-help group and other outside service providers.

(12) If a client performs work in a program, other than a personal care or housekeeping task, which is part of a therapeutic activity, the work shall be voluntary and consistent with his treatment plan.

(13) There shall be written policies and procedures on the use of medication by a client which shall include:

(a) Prescription and over-the-counter medication brought with a client shall be recorded in a client's record upon admission;

(b) A policy on self-administration of over-the-counter medication to include the identification of medication which requires physician approval prior to use by a client while in the program;

(c) A program shall obtain written consent from a client, to verify with a physician that a prescription or an over-the-counter medication described in paragraph (b) of this subsection is not contraindicated with the client's treatment plan, and the verification shall be documented in the client's record;

(d) Prescription and over-the-counter medication shall be stored in a locked and secure location inaccessible to clients;

(e) Medication shall be available to a client only at the time it is scheduled to be taken according to a prescription or as directed on the label; and

(f) Self-administration of prescription and over-the-counter medication shall be documented in the client's record and include name of the medication, date and time of self-administration, dosage and amount of medication, and name of the staff person who monitored the self-administration of the medication.

(14) Food services shall be provided according to the following:

(a) Meals shall be provided in accordance with 902 KAR 45:005;

(b) There shall be documentation that meal planning is approved by a registered dietician;

(c) There shall be documentation that a client involved in preparing meals for other clients receives orientation in health and safety issues related to food preparation and that staff provides periodic monitoring;

(d) A client with a special dietary requirement shall be provided food to meet his needs and the special dietary requirement shall be documented in the client's record;

(e) Adequate food shall be provided to ensure that a client is able to have at least three (3) meals daily; and

(f) Snacks shall be available.

(15) A program shall be staffed twenty-four (24) hours a day, seven (7) days a week, and staff shall include:

(a) A program manager, supervisor or coordinator;

(b) Staffing capability to ensure that an appropriate staff person is responsible for managing a program in the absence of a program manager, supervisor or coordinator; and

(c) Sufficient staff to meet client needs twenty-four (24) hours a day based on the number of clients, the need for assistance by clients, and the type of services delivered. If there are multiple twenty-four (24) hour programs operated in the same facility, the staff of all programs may be used to meet staffing requirements.

(16) There shall be at least one (1) staff person on duty at all times, who has completed training in crisis intervention and a minimum of twelve (12) hours of training in standard first aid, which includes cardiopulmonary resuscitation, in accordance with 902 KAR 13:050, conducted by a certified instructor. [In addition to the standards in Sections 1 through 10 of this administrative regulation, the following standards shall be met for a residential transitional living program:

(1) At intake, client identifying and demographic information, emergency contact person, and presenting problem shall be obtained

from a client:

(2) A client shall receive the following services:

(a) An assessment completed by program staff or obtained from a referring program which includes:

1. A psychosocial which shall include:

a. Presenting problem;

b. History of alcohol and drug use including previous treatment;

c. Current living arrangement including information regarding exposure to an individual who is engaging in the unhealthy or illegal use of alcohol or other drugs;

d. Family relationships including childhood and marital history, custody of children, sexual identity and a partner relationship if indicated;

e. Legal history;

f. Employment and military service history;

g. Education and vocational history;

h. Social and peer group relationships;

i. Religious background and practices;

j. History and treatment of mental retardation, a developmental disability and a mental health problem including emotional, physical and sexual abuse;

k. Ethnic and cultural background;

l. Leisure and recreational activities;

m. Client strengths and limitations; and

n. Diagnostic impression;

2. An evaluation of a client's current mental condition including the identification of an abnormality in behavior, affect, thought, memory, orientation, and contact with reality;

3. A copy of a physical examination completed by a medical professional within ninety (90) days of admission, or completion of a physical health status questionnaire which has been developed in consultation with a physician and includes:

a. Review of body systems;

b. Surgery and treatment history;

c. Current medical condition;

d. Assessment of pregnancy status based on a client's self-report or a pregnancy test;

e. Assessment of tuberculosis, hepatitis and human immunodeficiency virus status;

f. Prescription and over-the-counter medication;

g. Allergies including an allergic reaction to a medication; and

h. Identification of a medical condition that may affect a client's participation in treatment;

4. Information from a written report regarding a previous assessment and treatment if available; and

5. A diagnostic summary including an analysis of all assessment information and a recommended course of treatment;

(b) Treatment planning which includes:

1. A written individualized treatment plan based on an assessment shall be developed for a client within seven (7) calendar days of admission and shall include:

a. Diagnosis;

b. Identification of a client's problem;

c. Goals, measurable objectives and criteria for discharge;

d. Duration, frequency and type of service to be provided including a referral within or outside an AODE;

e. Staff person primarily responsible for implementing a treatment plan; and

f. Date for treatment plan review;

2. There shall be documentation in a client record that a treatment plan has been explained to a client and the extent to which a client agrees with the plan; and

3. A treatment plan and a client's progress shall be reviewed by a clinical staff person and a client monthly and documented in a client record;

(c) Alcohol and other drug abuse counseling shall be provided according to the following:

1. There shall be a focus on problems related to alcohol and other drug abuse;

2. There shall be individual counseling, group counseling or family counseling; and

3. A counseling service provided in a group shall have a maximum of fifteen (15) clients;

(d) Orientation to self-help groups specific to addiction recovery;



(e) Information about community recreational activities, which shall be conspicuously posted in a public area of a facility;

(f) Relapse prevention which includes:

1. A written relapse prevention plan shall be developed for a client who completes a program; and

2. A copy shall be given to a client and a summary of a relapse prevention plan shall be included in a client record as part of a progress note, discharge summary or aftercare plan; and

(g) Aftercare planning which shall include a written aftercare plan developed with a client's participation, based on a client's need at discharge, which includes activities supporting recovery from alcohol and other drug abuse, and a referral for continuing care.

(3) A progress note shall be recorded:

(a) Following the delivery of an individual counseling session and include a service provided, an observation of a client's behavior and response to the service, and a client's progress toward meeting the goals and objectives of the treatment plan; or

(b) Weekly, in a summary note, following the delivery of multiple services, with the exception of an individual counseling session, which shall be recorded in accordance with paragraph (a) of this subsection. A weekly summary note shall identify the services provided to a client during the week, a client's behavior and response to the services, and a client's progress toward meeting the goals and objectives of a treatment plan.

(4) There shall be documentation in a client record that a client is employed, pursuing employment, participating in vocational education or rehabilitation, or receiving a disability benefit.

(5) A discharge summary shall be completed within thirty (30) calendar days of discharge and include:

(a) Date of admission and discharge;

(b) Presenting problem;

(c) Diagnosis;

(d) Summary of treatment and response to treatment; and

(e) Referral made to another organization or provider.

(6) A client shall be provided an opportunity to meet with a self-help group and other outside service providers.

(7) If a client performs work in a program, other than a personal care or housekeeping task, which is part of a therapeutic activity, the work shall be voluntary and consistent with his treatment plan.

(8) There shall be written policies and procedures on the use of medication by a client which shall include:

(a) Prescription and over-the-counter medication brought with a client shall be recorded in a client's record upon admission;

(b) A policy on self-administration of an over-the-counter medication to include the identification of medication which shall require physician approval prior to use by a client while in the program;

(c) A program shall obtain written consent from a client, to verify with a physician that a prescription or an over-the-counter medication described in paragraph (b) of this subsection is not contraindicated with a treatment plan, and the verification shall be documented in a client record;

(d) Prescription and over-the-counter medication shall be stored in a locked, secure location inaccessible to a client;

(e) Medication shall only be available to a client at the time it is scheduled to be taken according to a prescription or as directed on a label; and

(f) Self-administration of prescription and over-the-counter medication shall be documented in a client record and include:

1. Name of the medication;

2. Date and time of self-administration;

3. Dosage and amount of medication; and

4. Name of a staff person who monitored the self-administration of a medication;

(9) Food services shall be provided according to the following:

(a) Meals shall be provided in accordance with 902 KAR 45:005;

(b) There shall be documentation that meal planning is approved by a registered dietician;

(c) A client involved in preparing meals shall be monitored by a staff person and there shall be documentation that a client receives orientation in health and safety issues related to food preparation;

(d) A client with a special dietary requirement shall be provided food to meet his needs and the special dietary requirement shall be documented in a client record;

(e) Adequate food shall be provided to ensure that a client is able

to have at least three (3) meals daily; and

(f) Snacks shall be available.

(10) Staffing:

(a) A program shall be staffed twenty-four (24) hours a day, seven (7) days a week, and an AODE shall ensure that staff include:

1. A program manager, supervisor or coordinator;

2. Staffing capability to ensure that an appropriate staff person is responsible for managing a program in the absence of a program manager, supervisor or coordinator; and

3. Sufficient staff to meet client needs twenty-four (24) hours a day based on the number of clients, the need for assistance by clients, and the type of services delivered.

(b) If there are multiple twenty-four (24) hour programs operated in the same facility, the staff of all programs may be used to meet staffing requirements:

(11) Within three (3) months of employment, a staff person shall be trained in crisis intervention, cardiopulmonary resuscitation in accordance with 902 KAR 13:050, Section 7, and standard first aid conducted by an instructor certified by the American Red Cross.]

Section 15. Outpatient [Treatment] Program. In addition to the standards in Sections 1 through 10 of this administrative regulation, the following standards shall be met in an outpatient program.

(1) At intake, client identifying and demographic information, emergency contact person, and presenting problem shall be obtained from a client.

(2) An assessment shall be completed on each client and include:

(a) A psychosocial which shall include presenting problem; history and treatment of alcohol and other drug abuse; current living arrangement; family relationships; legal, employment, military, educational and vocational history; peer group relationships; religious background and practices; history and treatment of mental retardation, a developmental disability or a mental health problem including emotional, physical and sexual abuse; ethnic and cultural background; leisure and recreational activities; client strengths and limitations; and diagnostic impression;

(b) A mental status examination which shall include a client's current mental condition including the identification of an abnormality in behavior, affect, thought, memory, orientation, and contact with reality;

(c) Completion of a physical health status questionnaire, which has been developed in consultation with a physician, and includes at least:

1. History of medical problems;

2. Client's self-report on current status of pregnancy, tuberculosis, hepatitis and human immunodeficiency virus;

3. Use of prescription and over-the-counter medication;

4. Allergies; and

5. Identification of a medical condition that may affect a client's participation in treatment; and

(d) A diagnostic summary based on an analysis of all information from the client's assessment and which includes a recommended course of treatment.

(3) A written individualized treatment plan based on the assessment shall be developed for each client with the client's participation before the fourth client session and include diagnosis; a client's problem; goals, measurable objectives and criteria for discharge; duration, frequency and type of service to be provided; referrals; staff person primarily responsible for developing the treatment plan; and the client's signature.

(4) A treatment plan and a client's progress shall be reviewed by a clinical staff person and the client every six (6) months and be documented in the client's record.

(5) Alcohol and other drug abuse counseling, including a focus on relapse prevention, shall be provided to each client and if provided in a group there shall be a maximum of fifteen (15) clients per clinician.

(6) Education shall be provided to each client on the effects of alcohol and other drug abuse, the disease and recovery from alcoholism and other drug dependency, consistent with the client's treatment plan.



(7) Orientation to self-help groups specific to addiction recovery shall be provided to each client.

(8) A written aftercare plan shall be developed for each client, with the client's participation, be based on a client's needs at discharge, and include activities and referrals supporting recovery from alcohol and other drug abuse.

(9) A progress note shall be recorded following each client contact, and if the contact involved in the delivery of a professional service, an observation of the client's behavior and response to the service and the client's progress toward meeting the goals and objectives of his treatment plan shall be recorded.

(10) A discharge summary shall be completed within thirty (30) calendar days of discharge and include the date of admission and discharge, presenting problem, diagnosis, summary of treatment and response to treatment, and referrals made to another organization or provider.

(11) A program shall have a procedure for informing clients of the availability of emergency services after a program's normal hours of operation.

(12) Staff shall include:

(a) A program manager, supervisor or coordinator; and

(b) Sufficient staff to meet client needs based on the number of clients, the need for assistance by clients, and the type of services delivered.

(13) If narcotic maintenance is provided it shall be provided in accordance with 908 KAR 1:340. [In addition to the standards in Sections 1 through 10 of this administrative regulation, the following standards shall be met for an outpatient treatment program:

(1) At intake, client identifying and demographic information; emergency contact person and presenting problem shall be obtained from a client.

(2) A client shall receive the following services:

(a) An assessment which includes:

1. A psychosocial which shall include:

a. Presenting problem;

b. History of alcohol and drug use including previous treatment;

c. Current living arrangement including information regarding exposure to an individual who is engaging in the unhealthy or illegal use of alcohol or other drugs;

d. Family relationships including childhood and marital history, custody of children, sexual identity and a partner relationship if indicated;

e. Legal history;

f. Employment and military service history;

g. Education and vocational history;

h. Social and peer group relationships;

i. Religious background and practices;

j. History and treatment of mental retardation, a developmental disability and a mental health problem including emotional, physical and sexual abuse;

k. Ethnic and cultural background;

l. Leisure and recreational activities;

m. Client strengths and limitations; and

n. Diagnostic impression;

2. An evaluation of a client's current mental condition including an identification of an abnormality in behavior, affect, thought, memory, orientation, and contact with reality;

3. A copy of a physical examination completed by a medical professional within ninety (90) days of admission or completion of a physical health status questionnaire which has been developed in consultation with a physician and includes:

a. Review of body systems;

b. Surgery and treatment history;

c. Current medical condition;

d. Assessment of pregnancy status based on a client's self-report or a pregnancy test;

e. Assessment of tuberculosis, hepatitis and human immunodeficiency virus status;

f. Prescription and over-the-counter medication;

g. Allergies including an allergic reaction to a medication; and

h. Identification of a medical condition that may affect a client's participation in treatment;

4. Information from a written report regarding a previous assess-

ment and treatment if available; and

5. A diagnostic summary including an analysis of all assessment information and a recommended course of treatment;

(b) Treatment planning which includes:

1. A written individualized treatment plan based on an assessment shall be developed for a client before the fourth client session and shall include:

a. Diagnosis;

b. Identification of a client's problem;

c. Goals, measurable objectives and criteria for discharge;

d. Duration, frequency and type of service to be provided including a referral within or outside an agency;

e. Individual primarily responsible for implementing a treatment plan; and

f. Date for treatment plan review;

2. There shall be documentation in a client record that a treatment plan has been explained to a client and the extent to which a client agrees with the plan; and

3. Case review of a treatment plan and a client's progress shall be conducted every six (6) months and documented in a client record;

(c) Alcohol and other drug abuse counseling shall be provided according to the following:

1. There shall be a focus on problems related to alcohol and other drug abuse;

2. There shall be individual counseling, group counseling or family counseling; and

3. A counseling service provided in a group shall have a maximum of fifteen (15) clients;

(d) Education on the effects of alcohol and other drug abuse, the disease and recovery from alcoholism and other drug dependency, consistent with a client's treatment plan;

(e) Orientation to self-help groups specific to addiction recovery; and

(f) Relapse prevention which includes:

1. A written relapse prevention plan shall be developed for a client who completes treatment; and

2. A copy shall be given to a client and a summary of a relapse prevention plan shall be included in a client record as part of a progress note or discharge summary;

(3) A progress note shall:

(a) Be recorded following a client contact; and

(b) If recorded following the delivery of a professional service include a service provided, an observation of a client's behavior and response to a service, and a client's progress toward meeting the goals and objectives of a treatment plan;

(4) A discharge summary shall be completed within thirty (30) calendar days of discharge and include:

(a) Date of admission and discharge;

(b) Presenting problem;

(c) Diagnosis;

(d) Summary of treatment and response to treatment; and

(e) Referral made to another organization or provider.

(5) A twenty-four (24) hour crisis intervention service shall be provided either directly by an AOBE or through referral to an outside provider. An AOBE shall maintain a telephone answering system to ensure that referral information regarding a crisis intervention service provided by an outside provider is available to a client twenty-four (24) hours daily.

(6) Personnel requirements shall include:

(a) A program manager, supervisor or coordinator; and

(b) Sufficient personnel to meet client needs based on the number of clients, the need for assistance by clients, and the type of services delivered.

(7) When narcotic maintenance for an opiate addict is provided it shall be provided in accordance with 908 KAR 1:340.]

Section 16. Intensive Outpatient Program. In addition to the standards in Sections 1 through 10 and 15(1), (2), (5), (6), (7), (8), (10), (11), and (12) of this administrative regulation, the following standards shall be met for an intensive outpatient program:

(1) A client shall receive a variety of structured comprehensive individual and group therapeutic activities for a minimum of six (6) hours over a period of two (2) or more days weekly.

(2) A written individualized treatment plan based on the assessment shall be developed for each client with the client's participation before the client's fourth session and include diagnosis; a client's problem; goals, measurable objectives and criteria for discharge; duration, frequency and type of service to be provided; referrals; staff person primarily responsible for developing the treatment plan; and the client's signature.

(3) A treatment plan and a client's progress shall be reviewed by a clinical staff person and the client monthly and be documented in the client's record.

(4) Information or education about alcoholism and other drug dependency and recovery shall be made available to a client's family or significant other and if a service is requested it shall be provided either directly or through referral to a qualified outside provider.

(5) A schedule of all planned therapeutic activities shall be given to each client or conspicuously posted in the facility.

(6) A progress notes which includes the service provided, an observation of the client's behavior and response to the service, and the client's progress toward meeting the goals and objectives of his treatment plan shall be recorded after an individual counseling session, and weekly in a summary note if the client receives multiple services.

(7) If a client receives services for at least five (5) consecutive hours daily, food services shall be provided either:

(a) Directly by the program according to the following:

1. Meals shall be provided in accordance with 902 KAR 45:005;

2. There shall be documentation that meal planning is approved by a registered dietician;

3. There shall be documentation that a client involved in preparing meals for other clients receives orientation in health and safety issues related to food preparation and that staff provides periodic monitoring;

4. A client with a special dietary requirement shall be provided food to meet his needs and the special dietary requirement shall be documented in the client's record; or

(b) A client shall be allowed adequate time to eat food obtained outside the facility. [In addition to the standards in Sections 1 through 10 of this administrative regulation, the following standards shall be met for an intensive outpatient treatment program:

(1) A structured comprehensive program of individual and group therapeutic activities shall be provided for a minimum of two (2) hours daily, at least three (3) times weekly and may be offered in phases.

(2) At intake, client identifying and demographic information, emergency contact person, and presenting problem shall be obtained from a client.

(3) A client shall receive the following services:

(a) An assessment which includes:

1. A psychosocial which shall include:

a. Presenting problem;

b. History of alcohol and drug use including previous treatment;

c. Current living arrangement including information regarding exposure to an individual who is engaging in the unhealthy or illegal use of alcohol or other drugs;

d. Family relationships including childhood and marital history; custody of children; sexual identity and a partner relationship if indicated;

e. Legal history;

f. Employment and military service history;

g. Education and vocational history;

h. Social and peer group relationships;

i. Religious background and practices;

j. History and treatment of mental retardation, a developmental disability and a mental health problem including emotional, physical and sexual abuse;

k. Ethnic and cultural background;

l. Leisure and recreational activities;

m. Client strengths and limitations; and

n. Diagnostic impression;

2. An evaluation of a client's current mental condition including an identification of an abnormality in behavior, affect, thought, memory, orientation, and contact with reality;

3. A copy of a physical examination completed by a medical professional within ninety (90) days of admission or completion of a physical health status questionnaire which has been developed in consultation with a physician and includes:

a. Review of body systems;

b. Surgery and treatment history;

c. Current medical condition;

d. Assessment of pregnancy status based on a client's self-report or a pregnancy test;

e. Assessment of tuberculosis, hepatitis and human immunodeficiency virus status;

f. Prescription and over-the-counter medication;

g. Allergies including an allergic reaction to medication; and

h. Identification of a medical condition that may affect a client's participation in treatment;

4. Information from a written report regarding a previous assessment and treatment if available; and

5. A diagnostic summary including an analysis of all assessment information and a recommended course of treatment;

(b) Treatment planning which includes:

1. A written individualized treatment plan based on an assessment shall be developed for a client before the fourth client session and shall include:

a. Diagnosis;

b. Identification of a client's problem;

c. Goals, measurable objectives and criteria for discharge;

d. Duration, frequency and type of service to be provided including a referral within or outside an AODE;

e. Individual primarily responsible for implementing a treatment plan; and

f. Date for treatment plan review;

2. There shall be documentation in a client record that a treatment plan has been explained to a client and the extent to which a client agrees with the plan; and

3. Case review of a treatment plan and a client's progress shall be conducted monthly and documented in a client record;

(c) Alcohol and other drug abuse counseling shall be provided according to the following:

1. There shall be a focus on problems related to alcohol and other drug abuse;

2. There shall be individual counseling, group counseling or family counseling; and

3. A counseling service delivered in a group shall have a maximum of fifteen (15) clients;

(d) Education on the effects of alcohol and other drug abuse, the disease and recovery from alcoholism and other drug dependency, consistent with a client's treatment plan;

(e) Orientation to self-help groups specific to addiction recovery;

(f) Relapse prevention which includes:

1. A written relapse prevention plan shall be developed for a client who completes treatment; and

2. A copy shall be given to a client and a summary of a relapse prevention plan shall be included in a client record as part of a progress note, discharge summary or aftercare plan; and

(g) Aftercare planning which shall include a written aftercare plan developed with a client's participation, based on a client's need at discharge, which includes activities supporting recovery from alcohol and other drug abuse, and a referral for continuing care.

(4) Information or education about alcoholism and other drug dependency and recovery shall be made available to a client's family or significant other, and if a service is requested it shall be provided either directly by an AODE or through referral to a qualified outside provider.

(5) There shall be a time schedule of all planned therapeutic activities and the schedule shall be given to a client or conspicuously posted.

(6) A progress note shall be recorded:

(a) Following the delivery of a professional service and include a service provided, an observation of a client's behavior and response to the service, and a client's progress toward meeting the goals and objectives of the treatment plan; or

(b) Weekly, in a summary note, following the delivery of multiple services, with the exception of an individual counseling session, which shall be recorded in accordance with paragraph (a) of this subsection.

A weekly summary note shall identify the services provided to a client during the week, a client's behavior and response to the services, and a client's progress toward meeting the goals and objectives of a treatment plan:

(7) A discharge summary shall be completed within thirty (30) calendar days of discharge and include:

- (a) Date of admission and discharge;
- (b) Presenting problem;
- (c) Diagnosis;
- (d) Summary of treatment and response to treatment; and
- (e) Referral made to another organization or provider.

(8) A twenty-four (24) hour crisis intervention service shall be provided either directly by an AODE or through referral to an outside provider. An AODE shall maintain a telephone answering system to ensure that referral information regarding a crisis intervention service provided by an outside provider is available to a client twenty-four (24) hours daily.

(9) When a client receives services for at least five (5) consecutive hours daily, food services shall be provided either:

(a) Directly by the program according to the following:

1. Meals shall be provided in accordance with 902 KAR 45:005;

2. There shall be documentation that meal planning is approved by a registered dietician;

3. A client involved in preparing meals shall be monitored by personnel and there shall be documentation that a client receives orientation in health and safety issues related to food preparation; and

4. A client with a special dietary requirement shall be provided food to meet his needs and the special dietary requirement shall be documented in a client record; or

(b) A client shall be allowed adequate time to eat food obtained outside the facility.

(10) Personnel requirements shall include:

(a) A program manager, supervisor or coordinator; and

(b) Sufficient personnel to meet client needs based on the number of clients, the need for assistance by clients, and the type of services delivered.}]

**Section 17. Halfway House Program.** In addition to the standards in Sections 1 through 10 of this administrative regulation, the following standards shall be met in a halfway house program if staff do not provide counseling on site:

(1) At intake, client identifying and demographic information, emergency contact person, and presenting problem shall be obtained from a client.

(2) Completion of a physical health status questionnaire, which has been developed in consultation with a physician, and includes at least:

(a) History of medical problems;

(b) Client's self-report on current status of pregnancy, tuberculosis, hepatitis and human immunodeficiency virus;

(c) Use of prescription and over-the-counter medication;

(d) Allergies; and

(e) Identification of a medical condition that may affect a client's participation in the program.

(3) A written individualized referral plan based on the client's needs shall be developed for each client, with the client's participation, within seven (7) calendar days of admission and be documented in the client's record.

(4) A referral plan shall identify both a client's need for employment services; vocational education, training or rehabilitation services; disability services; other health and human services; and the referrals needed to obtain these services.

(5) A referral plan and the client's progress shall be reviewed monthly by the program manager and the client and documented in the client's record.

(6) If a client is in need of counseling services the counseling shall be provided by referral to an appropriately licensed, certified or accredited provider.

(7) Orientation to self-help groups shall be provided to each client.

(8) A written aftercare plan shall be developed for each client with the client's participation, be based on the client's needs at discharge, and include activities and referrals supporting recovery from alcohol and other drug abuse.

(9) A progress note shall be recorded weekly in a summary note documenting the client's progress in employment; pursuing employment; participation in vocational education, training or rehabilitation; and following through on referrals to needed services.

(10) A discharge summary shall be completed within thirty (30) calendar days of discharge and include date of admission and discharge, summary of the client's progress in relation to his referral plan, and referrals.

(11) A client shall be provided an opportunity to meet with a self-help group and other outside service providers.

(12) If a client performs work in the program, other than a personal care or housekeeping task, which is part of a therapeutic activity, the work shall be voluntary and consistent with his recovery.

(13) There shall be written policies and procedures on the use of medication by a client which shall include:

(a) Prescription and over-the-counter medication brought with a client shall be recorded in a client's record upon admission;

(b) A policy on self-administration of over-the-counter medication to include the identification of medication which requires physician approval prior to use by a client while in the program;

(c) A program shall obtain written consent from a client, to verify with a physician that a prescription or an over-the-counter medication described in paragraph (b) of this subsection is not contraindicated with the client's recovery, and the verification shall be documented in the client's record;

(d) Prescription and over-the-counter medication shall be stored in a locked and secure location inaccessible to clients;

(e) Medication shall be available to a client only at the time it is scheduled to be taken according to a prescription or as directed on the label; and

(f) Self-administration of prescription and over-the-counter medication shall be documented in the client's record and include name of the medication, date and time of self-administration, dosage and amount of medication, and name of the staff person who monitored the self-administration of the medication.

(14) Food services shall be provided according to the following:

(a) Meals shall be provided in accordance with 902 KAR 45:005;

(b) There shall be documentation that meal planning is approved by a registered dietician;

(c) There shall be documentation that a client involved in preparing meals for other clients receives orientation in health and safety issues related to food preparation and that staff provides periodic monitoring;

(d) A client with a special dietary requirement shall be provided food to meet his needs and the special dietary requirement shall be documented in the client's record;

(e) Adequate food shall be provided to ensure that a client is able to have at least three (3) meals daily; and

(f) Snacks shall be available.

(15) A program shall include at least the following staff:

(a) A program manager, who shall be responsible for the day-to-day management of the program, and for implementation of program policies and procedures, including planning, coordination, and supervision of the clients;

(b) Staffing capability to ensure that an appropriate staff person is responsible for managing a program in the absence of the program manager, supervisor or coordinator; and

(c) Sufficient staff to meet client needs twenty-four (24) hours a day based on the number of clients and the need for assistance by clients. If there are multiple twenty-four (24) hour programs operated in the same facility, the staff of all programs may be used to meet staffing requirements.

(16) There shall be at least one (1) staff person on duty at all times, who has completed training in crisis intervention and a minimum of twelve (12) hours of training in standard first aid, which includes cardiopulmonary resuscitation in accordance with 902 KAR 13:050, conducted by a certified instructor.

ELIZABETH REHM WACHTEL, Ph.D., Commissioner  
JOHN H. MORSE, Secretary  
JOHN H. WALKER, Attorney  
APPROVED BY AGENCY: July 2, 1998  
FILED WITH LRC: July 2, 1998 at 11 a.m.

# REGULATORY IMPACT ANALYSIS

Agency Contact Person: Elizabeth Rehm Wachtel, Ph.D., Commissioner

(1) Type and number of entities affected: Currently there are approximately 110 persons or agencies licensed as nonmedical alcohol and education (NATE) centers and drug abuse treatment and education (DATE) centers which are affected. These persons or agencies operate 428 facilities and provide services to approximately 55,000 clients per year. All licensed persons and agencies will be affected by the revised licensure requirements which will now require them to be licensed as an alcohol and other drug abuse treatment entity (AODE).

(2) Direct and indirect cost or savings to those affected:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: No comments received at the public hearing related to the cost of living and employment in the geographical area in which this administrative regulation will be implemented.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comment received: There were several comments received at the public hearing regarding the cost of doing business in the geographical area in which this administrative regulation will be implemented. Several comments predicted that the original regulation would result in substantial increases in cost and possibly cause several programs to close. As a result of these comments, the Department for Mental Health/Mental Retardation Services amended this regulation. With due consideration to these comments many changes were made to the original regulation that will minimize the cost increase to the agencies being affected. It is the Department's position that if standards in this regulation have an additional cost to the affected agencies this is necessary to protect the public health and safety of the citizens of the Commonwealth.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There will be a total of \$21,080 in increased costs for fourteen (14) of the agencies to license 136 additional facilities at \$155 for each facility. These fourteen (14) agencies were previously eligible to operate their alcohol and other drug abuse outpatient and intensive outpatient treatment programs under their community mental health center license. However, these new licensing requirements no longer allow for this exemption. The \$21,080 in increased costs will be offset by \$2,180 in reduced licensing fees because the community mental health centers will no longer have to license fourteen (14) facilities that were previously licensed as a NATE and DATE education program. These new regulations do not license education programs. There will be a total of \$31,050 in increased costs for 110 licensed persons and agencies to obtain this new AODE license for 414 of their currently licensed facilities. These persons and agencies will be required to pay a \$155 fee for a new AODE license rather than an \$80 fee to renew their existing license. This will result in an increased cost of seventy-five (75) dollars for each currently licensed facility. When an AODE changes its name there will be an increased cost of twenty-five (25) dollars for processing the change. When an AODE changes its location there will be an increased cost of eighty (80) dollars to license the new facility. There may be increased costs associated with the stricter requirements for clinical supervision and the documentation of clinical supervision. There will be increased costs of \$21,000, to train approximately 150 clinical supervisors in clinical supervision training, at an estimated cost of \$140 per person. There will be increased costs of \$4,200, to train approximately 30 case managers in case management training, at an estimated cost of \$140 per person. There may be some additional costs related to

the increased paper work requirements associated with the documentation of staff training. There will be increased costs for AODE's not previously carrying liability insurance. In addition, there will be increased costs for approximately seventy-five (75) for-profit licensed AODEs which will be required to pay ten (10) dollars for a criminal background check on each prospective employee.

2. Second and subsequent years: There will be a total of \$10,880 in increased costs for the fourteen (14) community mental health centers, to renew the licenses for the 136 additional facilities that were newly licensed the first year, at a cost of eighty (80) dollars per facility. There will be no increased cost for the other 414 previously licensed facilities as they currently are required to pay the same eighty (80) dollar relicensure fee for each of their facilities. The estimated seventy-five (75) for-profit licensed AODEs will be required to pay ten (10) dollars for a criminal background check on prospective employees only. Staff training costs associated with the requirement for clinical supervision and case management training would be reduced to approximately \$8,300. This training cost would cover any new staff employed as a result of staff turnover.

(3) Effects on the promulgating administrative body: Minimal

(a) Direct and indirect cost or savings:

1. First year: There will be some cost to provide technical assistance to the AODEs affected and training to the Office of Inspector General, Cabinet for Health Services, which is the administrative body responsible for enforcing this licensure regulation. There may be minimal increased costs associated with the process of approving case management and clinical services supervision training.

2. Continuing cost or savings: Same as the first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Minimal

(4) Assessment of anticipated effect on state and local revenues: There will be increased state revenues in the form of licensure fees paid for each facility. There may be increased state revenues associated with new licensure costs if an agency changes its name or location.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Existing general and agency funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulations will be implemented: No comments received at the public hearing related to the economic impact including the effects of economic activities arising from this administrative regulation in the geographical area in which this administrative regulation will be implemented.

(b) Kentucky: Same as above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods were not considered since provisions are mandated by state law.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The licensure standards should improve the quality of services delivered to alcohol and other drug abuse clients particularly with the stricter requirements related to staff supervision. Improving the quality of treatment services provided to clients should decrease the abuse of alcohol and other drugs, thereby improving the health and safety of the citizens of the Commonwealth.

(b) State whether a detrimental effect on environment and public health would result if not implemented: A detrimental effect on the environment and public health may result if the standards in this administrative regulation are not implemented.

(c) If detrimental effect would result explain detrimental effect: Drug and alcohol dependency is one of the most devastating health and social problems facing Kentucky. Driving under the influence, welfare dependency, child abuse, crime, and physical health problems such as HIV disease and drug affected babies born to drug or alcohol dependent mothers are just a few of the detrimental effects of untreated alcohol and other drug abuse. These licensure standards for non-medical alcohol and other drug abuse treatment programs will require treatment standards that will assure clients that their treatment will be conducted in a safe environment and in a professional manner that promotes a positive therapeutic outcome.

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

(9) Identify any statute, administrative regulation or governmental policy which may be in conflict, overlapping, or duplication: There is no statute, administrative regulation or governmental policy in conflict. However, this administrative regulation overlaps with the following community mental health center statute KRS 210.380 - 470 and the following community mental health center administrative regulations 908 KAR 2:020 - 030 and 902 KAR 20:091.

(a) Necessity of proposed regulation if in conflict. None in conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: None in conflict.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Yes. Tiering was applied for entities licensed as residential transitional living programs. This was necessary due to recommendations in several of the public hearing comments. They pointed out the need to provide program standards for clients who do not require on-site clinical services as well as for clients who do require clinical on-site services. Since the development of residential transitional treatment standards under the previous Non-medical Alcohol Treatment and Education (NATE) Center and Drug Abuse Treatment and Education (DATE) Center licensure regulations, the alcohol and other drug treatment field has developed specialized residential transitional programs to meet the needs of special populations such as the dually diagnosed, pregnant women, victims of domestic violence and adolescents. Due to the complex needs of these special populations, and the continued need for programs serving clients with less complex recovery needs, the Department believes that tiered standards should be established for residential transitional living programs.

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Although approximately twenty-two (22) licensed AODEs affected by this regulation receive federal funds from the Substance Abuse Prevention and Treatment Block Grant, there is no federal regulatory mandate for these AODEs to deliver the services which this regulation governs. This regulation is only mandated by state statute.

2. State compliance standards. None

3. Minimum of uniform standards contained in the federal mandate. None

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, that those required by the federal mandate? None

5. Justification for the imposition of stricter standard, or additional or different responsibilities of requirements. None

PROPOSED AMENDMENTS RECEIVED THROUGH NOON, JULY 15, 1998

KENTUCKY HIGHER EDUCATION  
ASSISTANCE AUTHORITY  
(Amendment)

11 KAR 3:100. Administrative wage garnishment.

RELATES TO: KRS 164.744(1), 164.748(4), (10), [(15);] (19)  
164.753(2), 34 CFR 682.410(b)(10), 20 USC 1095a  
STATUTORY AUTHORITY: KRS 164.748(4), [(15);] 164.753(2),  
20 USC 1095(a)

NECESSITY, FUNCTION, AND CONFORMITY: Pursuant to KRS 164.744(1) and 164.748(2) the Kentucky Higher Education Assistance Authority has entered into agreements with the secretary to provide loan guarantees in accordance with Title IV, Part B of the federal act. 20 USC 1095a [KRS 164.748(10) empowers the authority to collect from borrowers loans on which the authority has met its guarantee obligation. Section 605 of PL 102-164 (20 USC 1095-1) permits a student loan guarantee agency to garnish the disposable pay [wages] of a borrower to recover [on] a loan guaranteed pursuant to Title IV, Part B of the federal act, notwithstanding any provision of state law. That section also permits the student loan guarantee agency to establish procedures for requesting and conducting a hearing related to the wage garnishment. KRS 164.748(10) authorizes the authority to collect from borrowers loans on which the authority has met its guarantee obligation, and KRS 164.748(10) authorizes the authority to conduct administrative hearings, exempt from KRS Chapter 13B, pertaining to wage garnishment. This administrative regulation is necessary to establish the procedures for implementing [such] wage garnishment in accordance with requirements of the federal act. [This amendment is necessary to simplify and clarify aspects of the delivery of notices and the hearing procedure.]

Section 1. (1) Following payment of a claim by the authority to a participating lender by reason of the borrower's default in repayment of an insured student loan, the authority, acting through its executive director or other designee, may issue an administrative order for the withholding of the debtor's disposable pay, which order conforms to the requirements of this section.

(2) This administrative regulation shall apply to a debtor who is either a borrower or an endorser of an insured student loan.

(3) [(2)] No order for withholding of disposable pay shall be issued under this section nor become effective less than thirty (30) days after the authority provides a written notice to the debtor by personal service or mail, addressed to the debtor at the residence or employment location last known to the authority[; a written notice]. The notice shall include at least the following information:

- (a) The name and address of the debtor;
- (b) The amount of the debt determined by the authority to be due;
- (c) Information sufficient to identify the basis for the debt;
- (d) A statement of the intention of the authority to issue an [and]

order for withholding of disposable pay [and that the debtor's earnings and property are subject to both administrative and judicial enforcement];

(e) A statement of the right to dispute the existence or amount of the debt or the terms of any proposed [prior] repayment schedule under the garnishment order (other than a repayment schedule agreed to in writing pursuant to paragraph (g) of this subsection);

(f) A statement of the right to inspect and copy any records relating to the debt open to inspection in accordance with KRS 61.870 through 61.884;

(g) A statement of the opportunity to enter into a written agreement with the authority, on terms satisfactory to the authority, establishing a schedule for repayment of the debt;

(h) A statement that, unless there is good cause determined by the authority for the debtor's failure to timely request a hearing, the debtor's acquiescence to the withholding of disposable pay shall [will] be presumed; and

(i) A statement that if the debtor requests a hearing, but fails to appear without good cause determined by the hearing officer, the hearing officer shall affirm the issuance of an order for withholding of disposable pay.

(4) [(3)] Notwithstanding subsection (1) of this section, no amount

shall be withheld from the disposable pay of an individual during the first twelve (12) consecutive months of reemployment commenced within twelve (12) months following an involuntary separation from employment.

(5) [(4)] Establishment of a written repayment schedule in accordance with subsection (3) [(2)](g) of this section shall be deemed, for purposes of subsection (3) [(2)](e) of this section, conclusive acknowledgement by the debtor of the existence and amount of debt agreed to be paid.

(6) [(5)] Service of the notice described in subsection (3) [(2)] of this section shall be conclusively presumed to be effected five (5) days after mailing of the notice by the authority, unless the notice is returned to the authority undelivered by the postal service. The date of service of the notice may otherwise be evidenced by affidavit of a person [an individual] executing personal service or a delivery receipt.

Section 2. (1)(a) A hearing shall be provided if the debtor, on or before the 15th day following the date of service of the notice described in Section 1(3) of this administrative regulation, files with the authority a written request for a [such] hearing in accordance with procedures prescribed by this administrative regulation. The timely filing of a request for a hearing (evidenced by a legibly dated U.S. Postal Service postmark or mail receipt) shall automatically stay further collection activity under this administrative regulation pending the outcome of the hearing.

(b) If the debtor requests a hearing, but the request is not timely filed, a hearing shall be provided, but the request shall not stay further action pending the outcome of the hearing.

(c) A hearing officer, appointed by the authority (who shall not be an individual under the supervision or control of the board [head of the authority], except that nothing contained in this sentence shall preclude the appointment of an administrative law judge), shall conduct the hearing.

(d) A hearing officer shall voluntarily disqualify himself and withdraw from any case in which he cannot afford a fair and impartial hearing or consideration. Any party may request the disqualification of a hearing officer by filing an affidavit, upon discovery of facts establishing grounds for a disqualification, stating the particular grounds upon which he claims that a fair and impartial hearing cannot be accorded. The request for disqualification and the disposition of the request shall be a part of the official record of the proceeding. Grounds for disqualification of a hearing officer shall include, but shall not be limited to, the following:

- 1. Participating in an ex parte communication which would prejudice the proceedings;
- 2. Having a pecuniary interest in the outcome of the proceeding;
- or
- 3. Having a personal bias toward any party to a proceeding which would cause a prejudgment on the outcome of the proceeding.

(e) Dispute hearings shall be conducted in Franklin County or any other location agreed by the parties.

(f) In lieu of an in-person hearing, upon request of the debtor, a hearing may be conducted by telephone or the hearing officer may conduct a review based solely upon submission of written material by both the debtor and the authority. An in-person or telephonic hearing shall be mechanically, electronically or stenographically recorded.

(g) Unless required for the disposition of ex parte matters specifically authorized by this administrative regulation, a hearing officer shall not communicate off the record with any party to the hearing concerning any substantive issue, while the proceeding is pending.

(2)(a) The hearing officer's decision, reason therefore and an explanation of the appeal process shall be rendered in writing no more than sixty (60) days after receipt by the authority of the request for the hearing. The decision shall establish the debtor's liability, if any, for repayment of the debt and the amount to be withheld from the debtor's disposable pay.

(b) Subject to subsection (3)(b) of this section, the hearing officer's decision shall be final and conclusive pertaining to the right of the authority to issue an administrative order for the withholding of the debtor's disposable pay.

(c) Any person, upon request, may receive a copy of the official



record at the cost of the requester. The party requesting a recording or transcript of the hearing shall be responsible for transcription costs. The official record of the hearing shall consist of:

1. All notices, pleadings, motions, and intermediate rulings;
2. Any prehearing order;
3. Evidence received and considered;
4. A statement of matters officially noticed;
5. Proffers of proof and objections and rulings thereon;
6. Ex parte communications placed upon the record by the hearing officer;
7. A recording or transcript of the proceedings; and
8. The hearing officer's decision or an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation.

(3)(a) Following the issuance of the hearing officer's decision, the debtor or the authority may petition the [authority] board to review the decision.

(b) An adverse decision by the hearing officer shall be appealed in writing to the board not later than twenty (20) calendar days after the date of the hearing officer's decision. A petition for review of the hearing officer's decision shall be timely filed if received by the executive director within twenty (20) calendar days after the date of the hearing officer's decision. If there is no appeal to the board within twenty (20) days, the findings of the hearing officer shall be conclusive and binding upon the parties.

(c) A petition for review of the hearing officer's decision shall not stay a final order pending the outcome of the review. If the debtor's liability is established by the hearing officer's decision, an administrative order for withholding of disposable pay shall be issued by the authority within sixty (60) days after the date of the hearing officer's decision. If the debtor petitions the board to review the hearing officer's decision and obtains reversal, modification or remand of the hearing officer's decision, the authority shall return to the debtor any money received pursuant to the withholding order contrary to the final order of the board.

(d) The respondent may, within ten (10) calendar days from the date the petition was received by the executive director, provide a brief statement to the board responding to the petition for review. The response shall be timely filed if received by the executive director within ten (10) calendar days from receipt by the executive director of the petition for review.

(e) A petition for review of the hearing officer's decision shall contain the following information:

1. A concise statement of the reason that the petitioner asserts as the basis pursuant to paragraph (g) of this subsection for reversing, modifying or remanding the hearing officer's decision or an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation;

2. A statement specifying the part of the official record that the petitioner relies upon to support reversing, modifying or remanding the hearing officer's decision pursuant to paragraph (g) of this subsection; and

3. A statement of whether the petitioner believes that oral argument to the board is necessary.

(f) The board shall review the hearing officer's decision at its next regularly scheduled meeting convened at least thirty (30) days after the petition for review of the hearing officer's decision is received or at a special meeting convened for that purpose within ninety (90) days after receipt of the petition for review of the hearing officer's decision, whichever first occurs.

(g) The board shall decide the dispute upon the official record, unless there is fraud or misconduct involving a party, and may consider oral arguments by the debtor and the authority. The board shall not substitute its judgment for that of the hearing officer as to the weight of the evidence on questions of fact and shall uphold the hearing officer's decision unless it is clearly unsupported by the evidence and the applicable law. Otherwise, the board may reject or modify, in whole or in part, the hearing officer's decision, or it may remand the matter, including an order of the hearing officer issued pursuant to Section 3(2)(e) of this administrative regulation, in whole or in part, to the hearing officer for further proceedings as appropriate if it finds the hearing officer's final order is:

1. In violation of constitutional or statutory provisions;
2. In excess of the statutory authority of the agency;

3. Without support of substantial evidence on the whole record;

4. Arbitrary, capricious, or characterized by abuse of discretion; or

5. Based on an ex parte communication which substantially prejudiced the rights of any party and likely affected the outcome of the hearing.

(h) The final order of the board shall be in writing. If the final order differs from the hearing officer's decision, it shall include separate statements of findings of fact and conclusions of law. [in accordance with 11 KAR 4:030, which shall decide the dispute upon the hearing record. Where the debtor's liability is established by the hearing officer's decision, an administrative order for withholding of disposable pay may be issued forthwith by the authority, which shall, if the debtor's appeal is successful, return to the debtor any money received pursuant to the withholding order.]

(4) The remedies provided in this section shall not preclude the use of other judicial or administrative remedies available to the authority under the laws of the Commonwealth or federal laws and nothing contained in this section shall be construed to stay the use of other remedies.

Section 3. Hearing Procedure. (1) The debtor shall have the right to be heard by the hearing officer, be represented by counsel, present evidence, cross examine, and make both opening and closing statements.

(2)(a) [Not less than ten (10) days prior to the scheduled in-person or telephonic hearing, the parties shall exchange and submit to the hearing officer a list of the names, addresses, and phone numbers of any witnesses expected to testify at the hearing and a brief summary of the testimony of each witness expected to be introduced into evidence.] Upon request of either party at any time, the hearing officer may issue subpoena for production of documents or attendance of witnesses.

(b)1. Not more than ten (10) business days after the date of filing the request for a hearing or a review of written material, the debtor shall submit to the counsel for the authority [and the hearing officer,] a written statement specifically stating the basis of dispute [and a legible copy of any documentation that the debtor intends to offer as evidence].

2. Not less than fifteen (15) business days prior to the hearing the parties shall:

a. Confer and jointly stipulate the issues that are in controversy to be resolved by the hearing officer;

b. Discuss the possibility of informal resolution of the dispute;

c. Exchange a witness list of the names, addresses, and phone numbers of any witnesses expected to testify at the hearing and a brief summary of the testimony of each witness that the party expects to introduce into evidence; and

d. Exchange an exhibit list identifying documents to be admitted into evidence at the hearing and provide a legible copy of all exhibits.

3.a. If the debtor is unavailable or otherwise fails to confer and jointly stipulate the issues pursuant to subparagraph 2 of this paragraph, the authority may serve upon the debtor proposed stipulation of issues. If within five (5) calendar days the debtor fails to respond to the proposed stipulation of issues, the debtor shall be precluded from raising any additional issues not identified in the proposed stipulation of issues.

b. If the debtor is unavailable or otherwise fails to cooperate in a timely manner for the exchange of the witness or exhibit lists, the debtor shall be precluded from admitting the information as part of the evidence at the hearing.

4. The authority shall provide to the hearing officer the documentation submitted in accordance with subparagraph 1 of this paragraph and shall report to the hearing officer the results of the discussions between the parties described in subparagraphs 2 and 3 of this paragraph.

5. Additional time for compliance with the requirements of this paragraph [this requirement] may be granted by the hearing officer, upon request, if it does not prejudice the rights of the authority or delay the rendering of a hearing decision within the time prescribed in Section 3(2) of this administrative regulation.

6. If the debtor requests a hearing, but the debtor's written statement and supporting documentation considered from a viewpoint most

favorable to the debtor, does not reflect a genuine issue of fact or prima facie defense to the legal enforceability of the authority's claim, the hearing officer, on petition of the authority and notice to the debtor, may enter an order dismissing the request for a hearing and authorizing issuance of the order described in Section 4 of this administrative regulation.

(c) Facts recited in the authority's notice pursuant to Section 2(3) [(2)] of this administrative regulation that are not denied shall be deemed admitted. Each party shall remain under an obligation to disclose any new or additional items of evidence or witnesses which may come to their attention as soon as practicable.

(d) Either party, without leave of the hearing officer, may depose witnesses, upon reasonable notice to the witness and the opposing party, and submit to the opposing party interrogatories and request for admissions. The party receiving interrogatories or request for admissions shall respond within fifteen (15) calendar days. Each matter of which an admission is requested shall be deemed admitted unless, within fifteen (15) days after service of the request or a [such] shorter or longer time that the hearing officer may allow, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter.

(e) Noncompliance with the requirements of this subsection, including failure of the authority to timely appoint a hearing officer or request to a request for inspection of records or failure of the debtor to submit information in accordance with paragraph (b) of this subsection in a timely manner sufficient to permit the debtor, the authority, or the hearing officer to timely perform his obligations shall be sufficient grounds for entry of an appropriate order by the hearing officer, including, but not limited to, postponement, exclusion of evidence, dismissal of the appeal, quashing the withholding order, or vacating the stay.

(3) Order of proceeding.

(a) The hearing officer shall:

1. Convene an in-person or telephonic hearing;
2. Identify the parties to the action and the persons participating;
3. Admit into evidence the notice described in Section 1(3) [(2)] of this administrative regulation and the debtor's statement and the stipulations [response] described in subsection (2)(b)1 and 2 of this section;

4. Solicit from the parties and dispose of any objections or motions;

5. Accept into evidence any documentary evidence not objected to;

6. Solicit opening statements; and

7. Proceed with the taking of proof.

(b) The taking of proof shall commence first by the debtor and then by the authority, with opportunities for cross-examination, rebuttal, and closing statements.

(4) Rules of evidence.

(a) All testimony shall be made under oath or affirmation. The hearing officer shall not admit evidence that is excludable as a violation of an individual's constitutional or statutory rights or a privilege recognized by the courts of the Commonwealth. However, statutes or judicial rules otherwise pertaining to the admission of evidence in a judicial proceeding shall not apply to a hearing under this section, and the hearing officer may receive any evidence deemed reliable and relevant, including evidence that would be considered hearsay if presented in court, except that hearsay evidence shall not be sufficient in itself to support the hearing officer's decision. Copies of documents shall be admissible, and shall require only the minimal authentication necessary to establish a reasonable presumption of their genuineness and accuracy or may be admitted without objection. The hearing officer may exclude any evidence deemed unreliable, irrelevant, incompetent, immaterial, or unduly repetitious.

(b) Objections to evidentiary offers may be made by any party and shall be noted in the record.

(c) The hearing officer may take official notice of statutes and administrative regulations, facts which are not in dispute, and of generally-recognized technical or scientific facts. The hearing officer shall notify all parties, either before or during the hearing, or in preliminary reports or otherwise, of any facts so noticed and their source. All parties shall be given an opportunity to contest facts officially noticed.

(d) At the discretion of the hearing officer, the parties may be

allowed up to fifteen (15) days following the hearing to submit written arguments or briefs.

(5) Upon request of either party, the record of the hearing shall be transcribed, and shall be available to the parties at their own expense.

(6) Burden of proof.

(a) The authority shall have the burden to establish the existence and amount of the debt.

(b) The debtor shall have the burden to establish an affirmative defense.

(c) The party with the burden of proof on any issue shall have the burden of going forward and the ultimate burden of persuasion as to that issue. The ultimate burden of persuasion shall be met by a prima facie establishment of relevant, uncontroverted facts or, if relevant facts are disputed, a preponderance of evidence in the record.

(d) Failure to meet the burden of proof shall be grounds for a summary order from the hearing officer.

Section 4. Defenses. (1) Except as provided in subsection (2) of this section, a debtor may assert any defense to the issuance of an administrative order to withhold the debtor's disposable pay, legal or equitable, pertaining to the existence or amount of the debt or the terms of any proposed repayment schedule under the garnishment order (other than a repayment schedule agreed to in writing pursuant to Section 1(3)(g) of this administrative regulation).

(2) The hearing officer shall not consider as a defense any question of law or fact that has previously been adjudicated by a court of competent jurisdiction or by an independent third-party trier of fact in an administrative proceeding involving the debtor and the authority pertaining to the existence, amount, or the debtor's liability on the particular debt in question or the terms of a prior repayment schedule.

(3) If the debtor asserts as a defense a question of law or fact that was previously raised in an administrative proceeding before the authority pursuant to 11 KAR 4:030 or 11 KAR 4:050, the hearing officer may consider the matter, but shall give deference to the prior decision by the authority in the same manner that a court would give deference in reviewing the decision of an administrative agency. The hearing officer may reverse the prior decision only if the debtor presents evidence that:

(a) Circumstances have changed or new information is available; or

(b) The prior decision substantially disregarded or ignored the defense, was arbitrary, capricious, not supported by the facts or made through fraud.

(4) If the debtor asserts as a defense a claim of entitlement to discharge of the particular debt pursuant to 34 CFR 682.402, except for reason of bankruptcy, but has not previously sought discharge by the authority for that specific reason, the hearing officer shall stay the hearing for a period sufficient to permit the debtor to submit documentation to the authority for a determination of eligibility for entitlement to the discharge. At the expiration of the period of stay, the hearing officer shall review the circumstances and:

(a) Uphold the right of the authority to issue an order of wage withholding if the debtor has failed to submit documentation to the authority for review of entitlement to discharge;

(b) Dismiss the request for hearing if the debtor has submitted documentation and the authority has approved discharge of the debt; or

(c) Proceed with the hearing if the debtor submitted documentation and the authority denied discharge, except that the hearing officer shall consider the defense of entitlement to discharge in accordance with subsection (3) of this section.

(5) If the debtor asserts as a defense a claim that the debt was dischargeable in a previous bankruptcy pursuant to 20 USC 523(a)(8)(B), but the debtor did not previously seek discharge by the bankruptcy court, the hearing officer shall stay the hearing for a period sufficient to permit the debtor to reopen the bankruptcy case. At the expiration of the period of stay, the hearing officer shall review the circumstances and:

(a) Uphold the right of the authority to issue an order of wage withholding if the debtor has failed to obtain the bankruptcy court's permission to reopen the bankruptcy case to seek discharge of the particular debt; or

# VOLUME 25, NUMBER 2 – AUGUST 1, 1998

(b) Dismiss the request for hearing if the bankruptcy court has reopened the bankruptcy case to consider discharge of the particular debt.

(6)(a) If the debtor asserts as a defense a claim that withholding of his disposable pay would constitute an extreme financial hardship, the debtor shall submit documentation of all available resources and actual expenses and shall have the burden of demonstrating the necessity of actual expenses.

(b) The hearing officer shall compare the debtor's available resources and necessary expenses and current debt obligations of the debtor and debtor's dependents. The hearing officer shall determine that extreme financial hardship exists if the debtor currently is not able to provide at least minimal subsistence for the debtor and debtor's dependents that could be claimed on a federal income tax return. The hearing officer shall consider as available resources of the debtor income of the debtor, the debtor's spouse, and debtor's dependents from all sources, including nontaxable income and government benefits, expenses paid on behalf of debtor by another person, and the cash value of any current liquid assets, such as bank accounts and investments. The hearing officer shall consider the claim of extreme financial hardship in accordance with the following presumptions.

1. Withholding of any amount of disposable pay shall constitute an extreme financial hardship if:

a. The debtor resides in the District of Columbia or a state other than Alaska and Hawaii and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

Size of family unit	Poverty guideline
1	\$8,050
2	10,850
3	13,650
4	16,450
5	19,250
6	22,050
7	24,850
8	27,650

Debtor's Available Resources	Less Than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Owned dwelling	1,250	1,155	1,665	1,832	2,519	3,641	4,321	6,767	10,568
Rented dwelling	2,352	2,408	2,694	2,441	2,569	2,463	2,225	1,407	1,335
Other lodging	209	105	218	244	311	333	400	569	1,779
Utilities, fuels, and public services	1,290	1,377	1,821	2,011	2,153	2,421	2,550	2,768	3,444
Household services	145	143	233	177	372	382	397	579	1,448
Housekeeping and miscellaneous supplies	232	184	268	339	413	448	594	664	914
Household furnishing and equipment	603	344	564	613	957	1,029	1,792	2,372	3,090
Vehicle purchases (net outlay)	853	370	713	665	1,704	2,517	3,853	3,161	4,103
Gasoline and motor oil	364	248	450	608	782	957	1,040	1,343	1,451
Vehicle maintenance and repairs	286	159	318	432	509	649	714	1,041	1,220
Vehicle insurance	274	200	440	536	621	778	935	1,112	1,364
Vehicle lease, license, and other charges	95	61	93	233	264	259	311	683	1,145
Public transportation	227	183	350	382	325	508	456	651	1,378

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceeds the applicable amount for a category shall be presumed unnecessary:

	New York	Philadelphia	Boston	Pittsburgh	Buffalo
Annual Expenditures					
Owned dwellings	5,027	3,952	4,838	3,063	3,386
Rented dwellings	3,311	1,855	2,367	1,099	1,323
Other lodging	608	415	639	308	276
Utilities, fuels, and public services	2,585	2,196	2,401	2,300	2,153
Household services	625	394	710	436	221
Housekeeping and miscellaneous supplies	437	443	518	416	329
Household furnishings and equipment	1,429	1,023	1,329	1,195	1,465
Vehicle purchases (net outlay)	1,253	2,154	2,278	2,093	1,225
Gasoline and motor oil	764	793	863	765	785
Other vehicle expenses (repairs, insurance,					

Each additional person add \$2,800

b. The debtor resides in Alaska and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

Size of family unit	Poverty guideline
1	- \$10,070
2	13,570
3	17,070
4	20,570
5	24,070
6	27,570
7	31,070
8	34,570
Each additional person	add \$3,500

c. The debtor resides in Hawaii and the debtor's available resources do not exceed the applicable poverty guideline, multiplied by 125 percent, based on the debtor's family size:

Size of family unit	Poverty guideline
1	\$9,260
2	12,480
3	15,700
4	18,920
5	22,140
6	25,360
7	28,580
8	31,800
Each additional person	add \$3,220

2.a. If the debtor resides in Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, or Vermont, except for metropolitan areas listed in clause b of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

# VOLUME 25, NUMBER 2 – AUGUST 1, 1998

lease, license, and other charges)	2,083	2,082	1,977	1,550	1,430
Public transportation	895	389	637	382	195

3.a. If the debtor resides in Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, South Dakota, or Wisconsin, except for metropolitan areas listed in clause b of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less Than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Owned dwelling	1,029	669	1,327	1,846	2,288	3,075	3,887	5,737	8,770
Rented dwelling	1,192	1,559	1,553	1,466	1,572	1,592	1,303	871	578
Other lodging	187	137	148	281	250	265	434	511	1,146
Utilities, fuels, and public services	1,244	1,385	1,752	2,005	2,026	2,173	2,430	2,583	3,097
Household operations services	493	189	195	266	337	393	449	567	985
Housekeeping and miscellaneous supplies	284	197	257	281	415	422	554	593	809
Household furnishings and equipment	711	918	652	692	1,202	1,535	1,825	2,138	3,321
Vehicle purchases (net outlay)	705	580	1,449	2,230	2,464	2,912	3,833	5,200	6,462
Gasoline and motor oil	454	467	621	719	915	1,129	1,324	1,480	1,714
Vehicle maintenance and repairs	267	244	369	448	540	690	884	980	1,168
Vehicle insurance	228	243	379	528	587	694	870	1,063	1,191
Vehicle lease, license, and other charges	98	111	129	214	292	382	387	645	1,127
Public transportation	129	122	165	251	197	298	374	435	892

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceeds the applicable amount for a category shall be presumed unnecessary:

	Chicago	Detroit	Milwaukee	Minneapolis St. Paul	Cleveland	Cincinnati	St. Louis	Kansas City
Annual Expenditures								
Owned dwelling	5,297	4,394	4,764	5,308	3,033	3,695	3,111	3,518
Rented dwelling	2,143	1,467	1,600	1,443	1,800	1,605	1,274	1,481
Other lodging	543	556	510	544	343	515	408	291
Utilities, fuels, and public services	2,295	2,464	1,956	2,019	2,304	2,292	2,416	2,288
Household services	450	432	348	693	328	467	756	548
Housekeeping and miscellaneous supplies	433	411	393	502	328	402	379	377
Household furnishings and equipment	1,903	1,299	1,625	1,778	1,338	1,488	1,090	1,510
Vehicle purchases (net outlay)	3,238	3,200	3,840	2,579	2,076	3,172	3,670	2,839
Gasoline and motor oil	992	1,072	1,055	1,185	853	1,087	987	1,079
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	2,104	2,869	1,949	2,602	1,978	2,109	1,877	2,219
Public transportation	561	372	476	513	284	386	413	432

4.a. If the debtor resides in Alabama, Arkansas, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, or West Virginia, except for metropolitan areas listed in clause b. of this subparagraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less Than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Owned dwelling	1,274	810	1,310	1,587	1,943	3,033	3,872	4,981	8,671
Rented dwelling	1,512	1,463	1,559	1,692	1,921	1,998	1,606	1,238	702
Other lodging	181	45	104	139	208	244	360	487	1,032
Utilities, fuels, and public services	1,588	1,597	1,882	2,035	2,121	2,338	2,459	2,821	3,485
Household services	172	137	311	348	337	634	578	759	1,611
Housekeeping and miscellaneous supplies	155	234	314	320	351	469	442	523	755
Household furnishings and equipment	406	461	651	770	994	1,396	1,636	1,887	3,202
Vehicle purchases (net outlay)	954	834	1,264	2,034	3,227	2,809	3,795	4,719	5,937
Gasoline and motor oil	573	539	692	828	1,000	1,220	1,272	1,483	1,667
Vehicle maintenance and repairs	256	287	416	477	685	721	742	1,125	1,080

**VOLUME 25, NUMBER 2 – AUGUST 1, 1998**

Vehicle insurance	<u>292</u>	<u>252</u>	<u>427</u>	<u>575</u>	<u>699</u>	<u>802</u>	<u>889</u>	<u>1,076</u>	<u>1,237</u>
Vehicle lease, license, and other charges	<u>133</u>	<u>92</u>	<u>95</u>	<u>160</u>	<u>195</u>	<u>245</u>	<u>340</u>	<u>484</u>	<u>966</u>
Public transportation	<u>129</u>	<u>87</u>	<u>141</u>	<u>183</u>	<u>203</u>	<u>234</u>	<u>283</u>	<u>499</u>	<u>869</u>

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceeds the applicable amount for a category shall be presumed unnecessary:

	<u>Washington D.C.</u>	<u>Baltimore</u>	<u>Atlanta</u>	<u>Miami</u>	<u>Dallas- Fort Worth</u>	<u>Houston</u>
	<u>Annual Expenditures</u>					
Owned dwelling	<u>6,000</u>	<u>5,447</u>	<u>4,600</u>	<u>3,630</u>	<u>3,058</u>	<u>3,013</u>
Rented dwelling	<u>2,580</u>	<u>1,744</u>	<u>2,097</u>	<u>2,411</u>	<u>2,874</u>	<u>2,152</u>
Other lodging	<u>680</u>	<u>520</u>	<u>481</u>	<u>206</u>	<u>317</u>	<u>424</u>
Utilities, fuels, and public services	<u>2,379</u>	<u>2,262</u>	<u>2,611</u>	<u>2,260</u>	<u>2,579</u>	<u>2,588</u>
Household services	<u>746</u>	<u>652</u>	<u>611</u>	<u>629</u>	<u>696</u>	<u>749</u>
Housekeeping and miscellaneous supplies	<u>424</u>	<u>360</u>	<u>383</u>	<u>316</u>	<u>414</u>	<u>437</u>
Household furnishings and equipment	<u>1,634</u>	<u>1,280</u>	<u>1,526</u>	<u>1,410</u>	<u>1,631</u>	<u>1,307</u>
Vehicle purchases (net outlay)	<u>2,799</u>	<u>2,392</u>	<u>4,235</u>	<u>2,438</u>	<u>3,508</u>	<u>4,151</u>
Gasoline and motor oil	<u>1,005</u>	<u>916</u>	<u>990</u>	<u>962</u>	<u>1,270</u>	<u>1,165</u>
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	<u>2,304</u>	<u>2,013</u>	<u>2,676</u>	<u>2,202</u>	<u>2,661</u>	<u>2,438</u>
Public transportation	<u>664</u>	<u>332</u>	<u>433</u>	<u>535</u>	<u>404</u>	<u>415</u>

5.a. If the debtor resides in Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, or Wyoming, except for metropolitan areas listed in clause b of this paragraph, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	<u>Less Than \$5,000</u>	<u>\$5,000 to \$9,999</u>	<u>\$10,000 to \$14,999</u>	<u>\$15,000 to \$19,999</u>	<u>\$20,000 to \$29,999</u>	<u>\$30,000 to \$39,999</u>	<u>\$40,000 to \$49,999</u>	<u>\$50,000 to \$69,999</u>	<u>\$70,000 and over</u>
	<u>Annual Expenditures</u>								
Owned dwellings	<u>1,430</u>	<u>1,057</u>	<u>1,604</u>	<u>2,014</u>	<u>2,478</u>	<u>3,895</u>	<u>5,000</u>	<u>6,749</u>	<u>11,12</u>
Rented dwellings	<u>2,887</u>	<u>2,376</u>	<u>2,649</u>	<u>3,054</u>	<u>2,803</u>	<u>2,686</u>	<u>2,341</u>	<u>1,875</u>	<u>1,701</u>
Other lodging	<u>203</u>	<u>91</u>	<u>227</u>	<u>314</u>	<u>244</u>	<u>320</u>	<u>443</u>	<u>505</u>	<u>1,158</u>
Utilities, fuels, and public services	<u>1,304</u>	<u>1,226</u>	<u>1,503</u>	<u>1,489</u>	<u>1,837</u>	<u>2,027</u>	<u>2,204</u>	<u>2,536</u>	<u>2,913</u>
Household services	<u>260</u>	<u>204</u>	<u>256</u>	<u>301</u>	<u>371</u>	<u>390</u>	<u>671</u>	<u>767</u>	<u>1,550</u>
Housekeeping and miscellaneous supplies	<u>255</u>	<u>215</u>	<u>301</u>	<u>294</u>	<u>414</u>	<u>467</u>	<u>557</u>	<u>662</u>	<u>863</u>
Household furnishings and equipment	<u>423</u>	<u>296</u>	<u>864</u>	<u>813</u>	<u>916</u>	<u>1,294</u>	<u>1,453</u>	<u>3,524</u>	<u>4,258</u>
Vehicle purchases (net outlay)	<u>557</u>	<u>954</u>	<u>1,194</u>	<u>1,939</u>	<u>2,394</u>	<u>2,634</u>	<u>4,922</u>	<u>3,074</u>	<u>3,808</u>
Gasoline and motor oil	<u>522</u>	<u>489</u>	<u>649</u>	<u>764</u>	<u>962</u>	<u>1,174</u>	<u>1,307</u>	<u>1,432</u>	<u>1,613</u>
Maintenance and repairs	<u>647</u>	<u>294</u>	<u>511</u>	<u>581</u>	<u>633</u>	<u>686</u>	<u>1,151</u>	<u>1,235</u>	<u>1,398</u>
Vehicle insurance	<u>389</u>	<u>228</u>	<u>439</u>	<u>513</u>	<u>575</u>	<u>776</u>	<u>932</u>	<u>1,094</u>	<u>1,326</u>
Vehicle lease, license, and other charges	<u>205</u>	<u>135</u>	<u>195</u>	<u>197</u>	<u>271</u>	<u>369</u>	<u>448</u>	<u>690</u>	<u>1,158</u>
Public transportation	<u>373</u>	<u>208</u>	<u>164</u>	<u>257</u>	<u>288</u>	<u>328</u>	<u>363</u>	<u>545</u>	<u>1,223</u>

b. If the debtor resides in one (1) of the following metropolitan areas, actual annual expenditures by the debtor's family that exceeds the applicable amount for a category shall be presumed unnecessary:

	<u>Los Angeles</u>	<u>San Francisco</u>	<u>San Diego</u>	<u>Portland</u>	<u>Seattle</u>	<u>Honolulu</u>	<u>Anchorage</u>
	<u>Annual Expenditures</u>						
Owned dwellings	<u>4,907</u>	<u>6,172</u>	<u>4,458</u>	<u>4,779</u>	<u>5,115</u>	<u>5,244</u>	<u>4,690</u>
Rented dwellings	<u>3,583</u>	<u>3,155</u>	<u>3,610</u>	<u>2,069</u>	<u>2,051</u>	<u>3,734</u>	<u>3,373</u>
Other lodging	<u>484</u>	<u>577</u>	<u>289</u>	<u>465</u>	<u>518</u>	<u>742</u>	<u>466</u>
Utilities, fuels, and public services	<u>2,075</u>	<u>2,023</u>	<u>1,833</u>	<u>1,893</u>	<u>1,852</u>	<u>1,837</u>	<u>2,308</u>
Household services	<u>710</u>	<u>695</u>	<u>526</u>	<u>617</u>	<u>575</u>	<u>653</u>	<u>531</u>
Housekeeping and miscellaneous supplies	<u>449</u>	<u>390</u>	<u>438</u>	<u>427</u>	<u>529</u>	<u>446</u>	<u>333</u>
Household furnishings and equipment	<u>1,453</u>	<u>2,976</u>	<u>1,066</u>	<u>1,450</u>	<u>1,291</u>	<u>1,511</u>	<u>1,756</u>
Vehicle purchases (net outlay)	<u>2,270</u>	<u>2,121</u>	<u>2,305</u>	<u>2,738</u>	<u>2,851</u>	<u>2,231</u>	<u>2,260</u>
Gasoline and motor oil	<u>1,078</u>	<u>1,081</u>	<u>1,116</u>	<u>971</u>	<u>997</u>	<u>911</u>	<u>1,054</u>
Other vehicle expenses (repairs, insurance, lease, license, and other charges)	<u>2,353</u>	<u>2,692</u>	<u>2,511</u>	<u>1,908</u>	<u>2,232</u>	<u>2,329</u>	<u>2,393</u>
Public transportation	<u>413</u>	<u>564</u>	<u>463</u>	<u>474</u>	<u>698</u>	<u>879</u>	<u>1,010</u>

6. If the debtor is the only member of the household, actual annual expenditures by the debtor's family that exceed the applicable amount

# VOLUME 25, NUMBER 2 – AUGUST 1, 1998

for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less Than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Food	1,676	1,900	2,216	2,404	2,884	3,021	3,653	4,804	5,115
Apparel	403	482	582	844	1,347	1,494	1,440	1,872	3,755
Health insurance	327	621	743	602	456	410	566	609	647
Medical services	233	241	326	360	327	431	426	499	978
Prescription drugs	128	281	273	206	165	193	205	174	169
Medical supplies	27	42	46	41	63	70	65	55	79
Personal care products and services	137	163	243	199	265	336	407	467	651
Education	693	281	267	215	183	145	199	302	689
Life and other personal insurance	76	103	119	97	174	222	207	262	619

7. If the debtor's household consists of two (2) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less Than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Food	2,666	2,553	3,113	3,918	4,090	4,756	4,903	5,788	7,110
Apparel	1,024	797	601	1,090	1,353	1,429	1,865	2,269	3,369
Health insurance	495	857	1,232	1,316	1,267	1,029	1,127	948	1,181
Medical services	493	314	356	470	552	524	570	820	794
Prescription drugs	179	375	459	534	525	367	319	360	341
Medical supplies	63	44	99	93	89	89	127	118	147
Personal care products and services	186	200	264	313	377	517	553	652	745
Education	80	229	203	186	160	370	531	410	1,112
Life and other personal insurance	166	146	266	302	355	369	529	618	1,163

8. If the debtor's household consists of three (3) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less Than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Food	3,806	3,041	3,669	4,364	4,561	4,984	5,455	6,108	8,255
Apparel	974	1,241	1,263	1,502	1,617	1,960	2,287	2,266	4,134
Health insurance	444	287	505	783	772	844	879	950	1,076
Medical services	185	243	293	333	431	577	624	759	1,071
Prescription drugs	223	206	224	218	253	258	319	334	351
Medical supplies	40	30	53	81	86	71	119	159	174
Personal care products and services	279	257	312	374	458	502	488	651	737
Education	228	95	217	331	338	364	457	749	1,625
Life and other personal insurance	138	84	225	327	287	375	497	627	915

9. If the debtor's household consists of four (4) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less Than \$5,000	\$5,000 to \$9,999	\$10,000 to \$14,999	\$15,000 to \$19,999	\$20,000 to \$29,999	\$30,000 to \$39,999	\$40,000 to \$49,999	\$50,000 to \$69,999	\$70,000 and over
Annual Expenditures									
Food	4,529	4,209	5,377	4,650	5,299	6,428	7,046	8,723	
Apparel	1,272	1,739	1,643	1,656	2,003	2,218	2,739	3,952	
Health insurance	413	392	565	671	1,026	1,064	1,002	1,113	
Medical services	452	169	305	471	586	743	819	1,127	
Prescription drugs	160	155	151	209	179	307	289	382	
Medical supplies	27	47	86	69	87	102	119	194	
Personal care products and services	294	285	379	380	443	520	610	829	
Education	446	134	222	239	373	545	772	1,870	
Life and other personal insurance	178	220	228	287	417	490	719	1,103	

10. If the debtor's household consists of five (5) persons, actual annual expenditures by the debtor's family that exceed the applicable amount for a category, based on the debtor's available resources, shall be presumed unnecessary:

Debtor's Available Resources	Less Than \$10,000	\$10,000 to \$15,000	\$15,000 to \$20,000	\$20,000 to \$30,000	\$30,000 to \$40,000	\$40,000 to \$50,000	\$50,000 to \$70,000



# VOLUME 25, NUMBER 2 – AUGUST 1, 1998

Resources	\$10,000	\$14,999	\$19,999	\$29,999	\$39,999	\$49,999	\$69,999	over
Annual Expenditures								
Food	4,901	4,796	4,930	5,692	6,457	7,026	7,742	9,565
Apparel	1,654	1,521	1,192	1,779	1,769	2,217	3,114	4,383
Health insurance	376	290	381	643	823	974	1,164	1,220
Medical services	402	355	387	473	616	802	918	1,06
Prescription drugs	183	131	183	195	218	275	285	359
Medical supplies	35	46	40	62	93	92	115	212
Personal care products and services	392	297	340	391	433	574	706	716
Education	657	184	276	383	479	417	932	1,331
Life and other personal insurance	206	132	276	309	408	555	674	1,125

Section 5. [4:] (1) An administrative order issued by the authority to withhold disposable pay shall be served upon the debtor's employer personally or by mail. A notice of the issuance of the order shall be provided to the debtor's by regular first class mail. The order shall require the withholding and delivery to the authority of not more than ten (10) percent of the debtor disposable pay, except that a greater percentage may be deducted upon the written consent of the debtor.

(2) The order shall state the amount or percentage to be withheld and the amount of the debt, the statutory and regulatory basis therefore, and the time withholding is to begin.

(3) The order shall continue to operate until the debt is paid in full with interest accrued and accruing thereon at the prescribed rate in the promissory note or applicable law and collection costs that may be charged to the borrower under the promissory note or applicable law. The order shall have the same priority as provided to a judicially ordered garnishment prescribed in KRS 425.506.

(4) An employer who has been served with an administrative order for withholding of earnings shall answer the order within twenty (20) days, and shall provide a copy to the debtor the first time that withholding occurs and each time thereafter that a different amount is withheld. The employer shall be liable to the authority for any lawfully due amount which the employer fails to withhold from disposable pay due the debtor following receipt of the order, plus attorneys' fees, costs, and, in the discretion of a court of competent jurisdiction, punitive damages.

(5) No withholding under this section shall be grounds for discharge from employment, refusal to employ or disciplinary action against any employee subject to withholding under this section.

(6) The employer shall have no liability or further responsibility after properly, completely, and timely fulfilling the duties under this section.

Section 5. (1) Whenever this administrative regulation requires delivery of a notice, subpoena, or other communication by personal service, said service may be made by any officer authorized under KRS 454.140 to serve process or by any person over the age of eighteen (18) years of age, who shall prove service by affidavit or by the signature of the person being served.

(2) Receipt of a notice or other communication by the debtor shall be rebuttably presumed if the person to be served or any other adult with apparent authority at the place of residence or employment last known to the authority signs a receipt or refuses to accept the notice or communication after identification and offer of delivery to the person so refusing.

(3) In the case of an administrative order to withhold disposable pay served upon an employer, receipt shall be rebuttably presumed if the person to whom the order is directed signs or refuses to sign a receipt or if his employee or agent with apparent authority signs or refuses to sign a receipt.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: June 26, 1998

FILED WITH LRC: July 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, August 21, 1998 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, August 14, 1998, five days prior to the hearing, of their intent to

attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX # (502) 696-7293.

## REGULATORY IMPACT ANALYSIS

Agency Contact: Richard F. Casey

(1) Type and number of entities affected: There were approximately 32,000 borrowers of defaulted student loans, as of December 1997 with unpaid balances who are potentially subject to the remedy of administrative wage garnishment if they are employed and do not establish satisfactory repayment schedules. It is anticipated that for FY 1999 there will be another 11,000 borrowers default. An estimate, based on previous experiences, can be given. 2,396 accounts (student loans) entered the garnishment process during FY 1998. 39 debtors have requested a hearing. The majority of those cases were resolved, through repayment arrangements, before the hearing date.

(2) Direct and indirect costs or savings on the:

(a) Cost of Living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The administrative regulation provides a procedure for wage garnishment, under federal requirements, for recovery of defaulted insured student loans. Cost of living and employment would be affected only for those borrowers owing defaulted student loans who refuse to pay as agreed and necessitate issuance of an administrative order of wage garnishment, thus resulting in withholding by the employer of 10% of disposable earnings; reducing the debtor's take home pay. The proposed amendments to this administrative regulation will provide guidelines for the hearing officer to follow in conducting administrative wage garnishment hearings and presumptions and criteria for determining whether an extreme financial hardship would result from the withholding of a debtor's wages under the administrative wage garnishment. There may be savings to the debtor if the debtor meets the criteria of the extreme financial hardship requirements of this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent from the public comments received: Withholding of wages by an employer pursuant to an order issued in accordance with this administrative regulation is required under a federal statute. Therefore, any impact upon the employer's cost of doing business arises from operation of the federal statute and not from this administrative regulation. The proposed amendments to this administrative regulation will provide guidelines for the hearing officer to follow in conducting administrative wage garnishment hearings and presumptions and criteria for determining whether an extreme financial hardship would result from the withholding of a debtor's wages under the administrative wage garnishment. Therefore, the proposed amendments to this administrative regulation will have no effect on the cost of doing business for any entity.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing cost (note any effects upon competition) for the:

1. First year following implementation: Under the applicable federal statute and the administrative regulation, a debtor is notified by the authority of the intent to issue an order of wage garnishment and is given an opportunity to avoid garnishment by either entering into a written repayment agreement or requesting a hearing to dispute the existence, amount or terms of repayment of the debt. The debtor must request a hearing in writing setting out the basis for his dispute. The debtor must also produce any documentation supporting his position that the garnishment order should not be issued, including financial data about his income and expenses if he is claiming that withholding under a garnishment order would constitute an extreme financial hardship. The proposed amendments to this administrative regulation set forth guidelines for the hearing officer to follow in conducting administrative wage garnishment hearings and presumptions and criteria for determining whether an extreme financial hardship would result from withholding of a debtor's wages under the administrative wage garnishment. If an administrative wage garnishment order is issued to an employer, the employer is required to withhold the specified percentage or amount from the debtor's pay, forward the withheld amount to the authority, and report the debtor's employment status and the calculation on which the withholding is based in the same manner as the employer would process a judicial order of wage garnishment. Similar to a judicial order of wage garnishment, the withholding and reporting is continuous each pay period until the debt is fully repaid. The proposed amendments will not itself effect the compliance, reporting and paperwork requirements for the employer.

2. Second and subsequent years: Same as #1 above.

(3) Effect on the promulgating body:

(a) Direct and indirect costs or savings:

1. First year: Under new federal directives, the authority is required to permit the debtor to request a hearing on grounds that withholding under an administrative order of wage garnishment would constitute an extreme financial hardship. The proposed amendments to this administrative regulation sets forth guidelines for the hearing officer to follow in conducting administrative wage garnishment hearings that are statutorily exempt from KRS Chapter 13B and sets forth presumptions and criteria for determining whether an extreme financial hardship would result from withholding of a debtor's wages under administrative wage garnishment. It is anticipated that there may be an increase in the number of hearings requested to assert extreme financial hardship as a basis for avoiding the issuance of a garnishment order. The potential increased number of requests for hearing cannot be predicted with any accuracy as it is entirely dependent upon the number of accounts submitted for recovery through administrative wage garnishment, the number of persons who enter into voluntary repayment agreements, and the financial circumstances of those facing withholding through the administrative order of wage garnishment. The potential increased number of hearings would somewhat increase the cost to the agency in paying for such hearings, which typically cost \$50 per hour for the use of a hearing officer from the Attorney General's Office and the additional cost of a court reporter or other means of recording the proceedings.

2. Continuing costs or savings: Same as #1 above.

3. Additional factors increasing or decreasing costs: Costs of conducting the hearings cannot currently be assessed directly to the debtor under the applicable federal law.

(b) Reporting and paperwork requirements: It is anticipated that a potential increase in the number of hearings requested will result in an increase in the volume of paperwork handled by the authority in terms of the scheduling of hearings, review and analysis of the documentation submitted by the debtor, and preparation for the hearing. The anticipated increase in the volume of paperwork can not be estimated since it is dependent upon the unknown variable of the number of accounts submitted for recovery through administrative wage garnishment, the number of persons who enter into voluntary repayment agreements, the number of debtors that may request a hearing, and the financial circumstances of those facing withholding through the administrative order of wage garnishment.

(4) Assessment of anticipated effect on state and local reve-

nues: The remedy of administrative wage garnishment is an important tool to the authority in the recovery of defaulted loans that would otherwise not be collected by voluntary payments. Therefore, implementation of the process authorized by federal law and embodied in the administrative regulation is anticipated to increase the authority's receipts. The funds collected on defaulted student loans are subject to federal restrictions and must be deposited into a trust fund to be used only for specific purposes pertaining to the student loan program. Therefore, any recovery through this process would not have an impact upon general state or local revenues. The proposed amendments to this administrative regulation only set forth guidelines for the hearing officer to follow in conducting administrative wage garnishment hearings and presumptions and criteria for determining whether an extreme financial hardship would result from withholding of a debtor's wages under administrative wage garnishment. There will be no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The authority maintains a federally restricted trust fund in accordance with KRS 164.754(2) and 34 CFR sec. 682.410(a) comprised of various receipts from operation of the insured student loan program, including, but not limited to, amounts recovered from debtors on defaulted student loans. This fund may be expended under the federal restrictions only for purposes of administering the insured student loan program.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: The administrative regulation itself sets out a process for issuance of an administrative order of wage garnishment as one remedy for the recovery of defaulted insured student loans. Consequently, the economic impact of the process is to enhance the recovery of public funds and maintain the financial stability of the insured student loan program. The proposed amendments to this administrative regulation only set forth guidelines for the hearing officer to follow in conducting administrative wage garnishment hearings and presumptions and criteria for determining whether an extreme financial hardship would result from withholding of a debtor's wages under administrative wage garnishment. It is anticipated that there will be no economic impact as the result of the proposed amendments to this administrative regulation.

(b) Kentucky: Same as (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods for implementation of the administrative wage garnishment process were considered as the process of notification to the debtor, the opportunities to enter a written repayment agreement or request a hearing and the timeframe in which a hearing must be conducted and a wage garnishment order issued are mandated by federal law and regulation. The proposed amendments to this administrative regulation regarding prehearing procedures are intended to expedite the completion of the hearing process within the short time period allowed by federal regulations. The proposed amendment pertaining to determination by the hearing officer of certain defenses, including the assertion by the debtor of extreme financial hardship are necessary to comply with recent requirements of the United States Department of Education regarding the administrative wage garnishment process. The authority considered as an alternative not attempting to define extreme financial hardship and not establishing relevant presumptions and criteria. However, this was considered too subjective. The authority believes that leaving the decision about the meaning of extreme financial hardship and the method to evaluate the debtor's financial circumstances entirely to the unfettered discretion of a hearing officer would not afford adequate consistency of decisions. This is because the authority uses many different hearing officers, and the administrative hearing process does not provide the advantage of guiding precedent through stare decisis. Therefore, the authority determined that the better alternative was to set certain parameters by specifying minimum exempt income levels and standards for measuring necessary expenses based upon national standards in which the hearing officer could exercise discretion in each particular case.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of

the geographical area in which implemented and on Kentucky: There is no effect on public health and environmental welfare.

(b) State whether a detrimental effect on the environmental or public health would result if not implemented: There is no effect on public health and environmental welfare.

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: There is no known conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no known conflict.

(10) Any additional information of comments: None

(11) Tiering: Was tiering applied? No. This administrative regulation prescribes uniform procedures for administration of the wage garnishment process under the federal law. Accordingly, the notice provisions, hearing procedures and wage withholding requirements need to be uniformly applicable to all those effected. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Cite the federal statute or regulation constituting the federal mandate. 34 CFR sec. 682.410(b)(10), 20 USCS sec. 1095a.

2. State in sufficient detail the state compliance standards. This regulation provides for the garnishment of the disposable pay of a borrower who has defaulted in making payments on a loan guaranteed pursuant to Title IV, Part B of the federal act and procedures for requesting and conducting a hearing related to the garnishment of the disposable pay. At least 30 days before the initiation of garnishment proceedings, the authority shall mail to the borrower's last known address, a written notice of the nature and amount of the debt, the intention of the authority to initiate proceedings to collect the debt through deductions from the borrower's pay, and an explanation of the borrower's rights. In the absence of evidence to the contrary, a borrower shall be considered to have received the notice 5 days after it was mailed by the authority. The authority shall offer the borrower an opportunity to inspect and copy authority records related to the debt and an opportunity to enter into a written repayment agreement with the authority under terms agreeable to the authority. The authority shall offer the borrower an opportunity for a hearing concerning the existence or the amount of the debt and the terms of the repayment schedule under the garnishment order. The authority shall provide a hearing, which, at the borrower's option, may be oral or written, if the borrower submits a written request for such a hearing. The time and location of the hearing shall be established by the authority. An oral hearing may, at the borrower's option, be conducted either in person or by telephone conference. The authority shall provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures prescribed in the administrative regulation, to be rendered within 60 days after the authority's receipt of the borrower's hearing request. The hearing official appointed by the authority to conduct the hearing may not be under the supervision or control of the head of the authority. The hearing official shall issue a final written decision. If the borrower's written request is received by the authority on or before the 15th day following the borrower's receipt of the notice of the nature and amount of the debt, the intention of the authority to initiate proceedings, and an explanation of the borrower's rights, the authority may not issue a withholding order until the borrower has been provided the requested hearing. If the borrower's written request is received by the authority after the 15th day following the borrower's receipt of the notice, the authority shall provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures prescribed in the administrative regulation, may be rendered within 60 days, but shall not delay issuance of a withholding order. This administrative regulation further provides that if the debtor does not submit required documentation in a timely fashion, then he has not

met his burden of substantiating his case. Additionally, if a defense has previously been raised and refuted by the authority, then the hearing officer must give deference to a prior decision of the authority. Also, if the debtor is raising for the first time in the administrative wage garnishment hearing a defense that should have been raised at the point of default or some prior action, then the debtor shall be deemed to have not exhausted his appropriate remedies, and the hearing officer may stay the hearing pending consideration of the dispute through the appropriate remedy. Finally, the administrative regulation provides the hearing officer with guidelines to follow which allow him to consistently construe and apply the concept of "extreme financial hardship." In order to prove "extreme financial hardship," a debtor must show, if his income is above the poverty level, that his expenses are necessary to the health, safety, or continued employment of the debtor. If the expenses of the debtor exceed the standards derived from data published by the Bureau of Labor Statistics, then the excess expenses are presumed unnecessary and are not considered in the determination unless the debtor can demonstrate that the expenses are necessitated as the result of extraordinary circumstances beyond his control, such as the cost of unreimbursed medical care. The final decision of the hearing officer may be appealed to and reviewed by the authority board on request of either party. An appeal from the hearing officer's decision shall follow the standard that the board shall uphold the hearing officer's decision unless it is clearly unsupported by the evidence. The authority may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been reemployed continuously for at least 12 months.

Unless the authority receives information that the authority believes justifies a delay or cancellation of the withholding order, it shall send a withholding order to the employer within 20 days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within 20 days after a final decision is made by the authority to proceed with garnishment. The employer shall deduct and pay to the authority from a borrower's wages an amount that does not exceed the lesser of 10 percent of the borrower's disposable pay for each pay period or the amount permitted by 15 USC 1673, unless the borrower provides the authority with written consent to deduct a greater amount.

3. State in sufficient detail the minimum or uniform standards contained in the federal mandate. The federal statute and regulation require the authority, as the designated state guarantee authority, to ensure by adoption of standards, policies and procedures that a borrower has an opportunity for a hearing to dispute the existence, amount or repayment of the debt and that the regulations and procedures for such a hearing meet the requirements of the applicable federal statute (20 USCS. sec. 1095a) and the applicable federal regulation (34 CFR sec. 682.410(b)(10)).

Specifically, the statute and regulation require that in order to issue an administrative order of wage garnishment under the authority of the federal statute: At least 30 days before the initiation of garnishment proceedings, the authority shall mail to the borrower's last known address, a written notice of the nature and amount of the debt, the intention of the authority to initiate proceedings to collect the debt through deductions from the borrower's pay, and an explanation of the borrower's rights. In the absence of evidence to the contrary, a borrower shall be considered to have received the notice 5 days after it was mailed by the authority. The authority shall offer the borrower an opportunity to inspect and copy authority records related to the debt and an opportunity to enter into a written repayment agreement with the authority under terms agreeable to the authority. The authority shall offer the borrower an opportunity for a hearing concerning the existence or the amount of the debt and the terms of the repayment schedule under the garnishment order. The authority shall provide a hearing, which, at the borrower's option, may be oral or written, if the borrower submits a written request for such a hearing. The time and location of the hearing shall be established by the authority. An oral hearing may, at the borrower's option, be conducted either in person or by telephone conference. The authority shall provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures that the authority may prescribe, to be rendered within 60 days after the authority's receipt of the borrower's hearing request. The hearing official appointed by the authority to conduct the hearing may not be

under the supervision or control of the head of the authority. The hearing official shall issue a final written decision. If the borrower's written request is received by the authority on or before the 15th day following the borrower's receipt of the notice of the nature and amount of the debt, the intention of the authority to initiate proceedings, and an explanation of the borrower's rights, the authority may not issue a withholding order until the borrower has been provided the requested hearing. If the borrower's written request is received by the authority after the 15th day following the borrower's receipt of the notice, the authority shall provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures that the authority may prescribe, may be rendered within 60 days, but shall not delay issuance of a withholding order. The authority may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been reemployed continuously for at least 12 months. Unless the authority receives information that the authority believes justifies a delay or cancellation of the withholding order, it shall send a withholding order to the employer within 20 days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within 20 days after a final decision is made by the authority to proceed with garnishment. The employer shall deduct and pay to the authority from a borrower's wages an amount that does not exceed the lesser of 10 percent of the borrower's disposable pay for each pay period or the amount permitted by 15 USC 1673, unless the borrower provides the authority with written consent to deduct a greater amount.

4. In detail, state whether this administrative regulation will impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. If the promulgating administrative body is permitted to select from within a range, state the reasons for the specific selection. Discuss each state requirement that is stricter than the federal mandate in a separate paragraph. The regulation does not impose stricter requirements than the federal mandate. The federal statute and regulation do not specify specific hearing procedures with the exception that the hearing must be conducted by an independent hearing officer and not an employee of the authority, the hearing must be conducted and a decision rendered within sixty (60) days after the receipt of the request for a hearing, and that the hearing officer's decision is final (in contrast to KRS Chapter 13B that specifies that the hearing officer renders a "recommended" order subject to finalization by the board.) The regulation complies with these requirements. The remaining policies and procedures for requesting and conducting a hearing are left to the discretion of the guaranty agency under the language that the hearing must be conducted "in accordance with the procedures that the agency may prescribe." The authority provides the debtor with the opportunity for a hearing to dispute the existence, amount or repayment of the debt. The regulation sets out the procedures for requesting a hearing, the appointment of an impartial hearing officer, the time limits for requesting a hearing and the procedures for conducting a hearing, and the procedures for appealing the decision of the hearing officer to the board. This administrative regulation further provides that if the debtor does not submit required documentation in a timely fashion, then he has not met his burden of substantiating his case. Additionally, if a defense has previously been raised and refuted by the authority, then the hearing officer must give deference to a prior decision of the authority. Also, if the debtor is raising for the first time in the administrative wage garnishment hearing a defense that should have been raised at the point of default or some prior action, then the debtor shall be deemed to have not exhausted his appropriate remedies, and the hearing officer may stay the hearing pending consideration of the dispute through the appropriate remedy. Finally, the administrative regulation provides the hearing officer with guidelines to follow which allow him to consistently construe and apply the concept of "extreme financial hardship." In order to prove "extreme financial hardship," a debtor must show, if his income is above the poverty level, that his expenses are necessary to the health, safety, or continued employment of the debtor. If the expenses of the debtor exceed the standards derived from data published by the Bureau of Labor Statistics, then the excess expenses are presumed unnecessary and are not considered in the determination unless the debtor can demonstrate that the expenses are necessitated as the result of extraordinary

circumstances beyond his control, such as the cost of unreimbursed medical care. The final decision of the hearing officer may be appealed to and reviewed by the authority board on request of either party. An appeal from the hearing officer's decision shall follow the standard that the Board shall uphold the hearing officer's decision unless it is clearly unsupported by the evidence.

5. For each state requirement that is stricter than the federal mandate, state the justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no requirements in this regulation that are stricter than the federal mandate.

# KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY (Amendment)

## 11 KAR 4:050. Set off of authority claims.

RELATES TO: KRS 44.030, 131.565, 164.748(10), (14), (19) [164.740 to 164.785; 31 CFR 30.33; 31 USC 3718, 3720A]

STATUTORY AUTHORITY: KRS 13B.170 [19A.100], 164.748(4), [(9), (10), (14)]; 34 CFR 30.33, 31 USC 3718, 3720A

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(10) and (14) authorize the authority to collect student loans from individual borrowers and to perform acts that are necessary or appropriate to carry out the purposes of the authority. [In accordance with] KRS 131.565 and Section 2653 of the Federal Deficit Reduction Act of 1984, as amended by the Cash Management Improvement Act Amendments of 1992 (PL 102-589), provide that the authority may enter agreements with the Kentucky Revenue Cabinet and with the federal government to provide for the withholding of income tax refunds owed to individuals indebted to the authority to satisfy claims established by the authority. In accordance with KRS 44.030, the authority may submit a claim to the State Treasurer to withhold any amount due to an individual from the treasury against a claim of the authority. This administrative regulation sets forth the process for notification and appeal afforded to individuals in implementing a set off of authority claims through the Kentucky Revenue Cabinet, the State Treasurer, or the federal government [Internal Revenue Service].

Section 1. [Notification. The authority shall send written notification by U.S. First Class Mail to the last known address of a person against whom the authority has a claim of any indebtedness to the authority for a sum certain for which set off is sought pursuant to KRS 131.560; 44.030, or 31 USC 3718. Said notification shall contain information sufficient to identify the person and to inform the person of the amount of the claim to be set off, the authority's intention to set off the claim; and the right to dispute the claim. The notification may contain such additional information as the authority may prescribe. Notification shall be sent not less than thirty (30) days prior to submitting the claim to the Kentucky Revenue Cabinet or to the State Treasurer or sixty-five (65) days prior to submitting the claim to the federal government for set off, and shall be deemed effective when placed with the Postal Service for delivery.

Section 2. Disputed Claims. (1) Any person notified pursuant to the Section 1 of this administrative regulation may petition the authority in writing to dispute the claim of the authority. This written statement of appeal shall specify the basis on which the authority's claim is disputed, including any legal or equitable defense the petitioner may have against recovery by the authority. The petitioner may supplement the written statement of appeal at any time prior to a final determination with any additional documentation. The petitioner shall submit such additional documentation as the authority may require.

(2) Time period for disputing the authority's claim. The petitioner shall submit the written statement of appeal within:

(a) Thirty (30) calendar days of the date the notification described in Section 1 of this administrative regulation is sent for setoff of any income tax refund pursuant to KRS 131.560 or set off of any amount due from the State Treasurer pursuant to KRS 44.030; or

(b) Sixty-five (65) calendar days of the date the notification described in Section 1 of this administrative regulation is sent for setoff of any income tax refund pursuant to 31 USC 3718, except that the

statement of appeal may be submitted after the 65th day, but not later than fifteen (15) days after the date the authority mails copies of documents to the petitioner, if the petitioner requests to inspect records in advance with 34 CFR 30.33(c)(1).

Section 3.] Federal Payment [Income Tax] Setoff. (1) Notification.

(a) The authority shall, not less than sixty-five (65) days prior to submitting the claim to the federal government for setoff, send written notification by U.S. First Class Mail to the last known address of a person against whom the authority has a claim of any indebtedness to the authority for a sum certain for which setoff is sought pursuant to 31 USC 3718.

(b) The notification shall contain information sufficient to identify the person and to inform the person of the amount of the claim to be set off, the authority's intention to set off the claim, and the right to dispute the claim. The notification may contain additional information as the authority may prescribe.

(2) Objection.

(a) Any person notified pursuant to subsection (1) of this section may submit to the authority a written objection setoff of federal payments to repay the claim of the authority. This written objection shall specify the basis on which the authority's claim is disputed, including all legal and equitable defenses the petitioner may have against recovery by the authority. The petitioner may supplement the written statement of appeal at any time prior to a final determination with any additional documentation. The petitioner shall submit additional documentation as the authority may require based upon the particular facts alleged in the petitioner's statement of appeal.

(b) If a person objects to setoff of federal payments to repay the claim of the authority within sixty-five (65) calendar days of the date the notification described in subsection (1) of this section is sent, [Upon receipt of a written statement of appeal on a timely basis,] the authority, or its designated representative, [shall refrain from referring the authority's claim to the federal government, and] shall make a final written determination of the validity of the claim and shall refrain from referring the authority's claim to the federal government pending the final determination. If within twenty (20) days of the date of the notification described in subsection (1) of this section the petitioner submits a request to inspect records, the written objection may be submitted after the 65th day but not later than fifteen (15) days after the date the authority mails copies of documents to the petitioner.

(c) The authority, or its designated representative, shall not consider as a defense any question of law or fact that has previously been adjudicated by a court of competent jurisdiction or that was previously raised in an administrative proceeding before the authority pursuant to 11 KAR 4:030 pertaining to the existence, amount, or the person's liability on the particular debt in question or the terms of a prior repayment schedule, except if the petitioner demonstrates that:

1. Circumstances have changed or new information is available; or

2. The prior decision substantially disregarded or ignored the defense, was arbitrary, capricious, not supported by the facts or made through fraud.

(d) 1. [(2)] The final determination of the authority shall be based on [any] documentation submitted by the petitioner, any other records relevant to the loan obligation from any other source, and relevant records of the authority, which shall be made available to the petitioner upon request, except that the petitioner may appear in person or by telephone to present additional facts upon request by the petitioner and explanation of why the authority cannot adequately resolve the issues raised by the petitioner by review of the documentary evidence.

2. The petitioner's request to appear in person or by telephone shall include identification of all persons [the individuals] that the petitioner wishes to have testify, identification of the specific issues regarding which each person is [the individuals are] prepared to testify, and an explanation of the reasons why each person's [individual's] testimony is necessary to resolve the issues.

3. The authority shall grant the petitioner's request to appear in person or by telephone if the authority determines, in its discretion, that the issues to be resolved require a determination of credibility or veracity.

4. [Such] Documentation considered by the authority and the record of any in-person or telephonic testimony shall constitute the

record of the appeal.

5. The authority's decision shall be written and sent to the petitioner at his last known address. If the decision is adverse to the petitioner, the decision shall state the facts on which the decision is based, any applicable administrative regulations, the conclusion underlying the decision, and the amount of the authority's claim to be set off against federal payments owed to the petitioner.

(e) Review of final determination of the authority.

1. If the petitioner disagrees with the final, written determination of the authority, the petitioner may submit a written request for review of the decision by the Secretary of the U.S. Department of Education.

2. The authority, or its designated representative, shall refrain from referring the authority's claim to the federal government, if the request for review by the Secretary of the U.S. Department of Education is submitted to the authority and received by the authority within thirty (30) calendar days after the date the authority's final written determination is rendered and mailed to the petitioner.

(3) If a person notified pursuant to subsection (1) of this section does not submit an objection within the time specified in subsection (2)(b) of this section or, upon a final determination upholding, in part or in whole, the claim of the authority, the petitioner does not submit a request for review of the authority's final determination within the time specified in subsection (2)(e) of this section, the claim may be referred by the authority to the federal government in accordance with 31 USC 3718 and 34 CFR 30.33(a). [If the petitioner disagrees with the final, written determination of the authority, the petitioner may submit a written request for review of the decision by the Secretary of the U.S. Department of Education in accordance with 34 CFR 30.33(d)(3).]

(4) Voluntary repayment. A person notified pursuant to subsection (1) of this section may agree to repay the debt to the authority on terms satisfactory to the authority.

(a) The authority, or its designated representative, shall refrain from referring the authority's claim to the federal government, if the person owing the debt agrees to make monthly payments, and submits the first payment to the authority and the payment is received by the authority not later than:

1. The 65th calendar day following the date the notification described in subsection (1) of this section is sent; or

2. The seventh calendar day after the date the authority's final written determination is rendered and mailed to the petitioner; or

3. The 15th calendar day after documents are mailed to the person owing the debt by the authority if the person requests to inspect documents within twenty (20) calendar days following the date the notification described in subsection (1) of this section is sent.

(b) For purposes of paragraph (a) of this subsection, the authority shall require that payments be received monthly on a timely basis and a downpayment of the lesser of the outstanding balance of the debt or \$250. The monthly payment amount acceptable to the authority shall be based upon the balance owed and at least equal the monthly accrual of interest on the debt, except that the monthly payment amount may be less than the monthly accrual of interest on the debt based upon consideration of the petitioner's and the petitioner's spouse's disposable income and reasonable and necessary expenses including but not limited to housing, utilities, food, medical costs, work-related expenses, dependent care costs, and other student loan repayments.

(c) After the authority has referred a claim to the federal government for setoff against any federal payment owed to the person owing the debt, no amount previously set off shall be refunded. The authority's claim for setoff shall be withdrawn if the person owing the debt or another person on behalf of the debtor agrees to make monthly payments acceptable to the authority, submits six (6) consecutive, timely payments as agreed, and requests the authority to withdraw the claim for setoff. The monthly payment amount acceptable to the authority shall be based upon the balance owed and at least equal the monthly accrual of interest on the debt, except that the monthly payment amount may be less than the monthly accrual of interest on the debt based upon consideration of the petitioner's and the petitioner's spouse's disposable income and reasonable and necessary expenses including but not limited to housing, utilities, food, medical costs, work-related expenses, dependent care costs, and other student loan repayments.



## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

(d) In support of a monthly payment amount less than the monthly accrual of interest, the petitioner shall submit to the authority:

1. Evidence of current income;
2. Evidence of current expenses; and
3. A statement of the unpaid balance on all other student loan debt.

(e) If a person establishes a repayment schedule in accordance with this subsection and subsequently fails to submit consecutive, timely payments, any subsequent repayment schedule established for the purpose of paragraphs (a) or (c) of this subsection shall require an initial payment of the lesser of the outstanding balance of the debt or \$500 plus ten (10) percent of the outstanding balance that exceeds \$1,000.

Section 2. [4:] (1) State income tax refund setoff.

(a) Notification.

1. The authority shall, not less than thirty (30) days prior to submitting the claim to the Kentucky Revenue Cabinet for setoff, send written notification by U.S. First Class Mail to the last known address of a person against whom the authority has a claim of any indebtedness to the authority for a sum certain for which setoff is sought pursuant to KRS 131.560.

2. The notification shall contain sufficient information to identify the person and to inform the person of the amount of the claim to be set off, the authority's intention to set off the claim pursuant to KRS 131.560, and the right to dispute the claim. The notification may contain additional information as the authority may prescribe.

(b) Objection.

1. Any person notified by the authority pursuant to paragraph (a) of this subsection or notified by the Kentucky Revenue Cabinet pursuant to KRS 131.570(1) [that an income tax refund may be withheld pursuant to KRS 131.560 because of a claim of the authority:] may petition the authority [within the time period specified in Section 2(2)(a) of this administrative regulation] for an administrative review and a hearing in accordance with 11 KAR 4:030, Sections 4 and 5. [subsection (3) of this section.]

2. The authority, or its designated representative, shall refrain from referring the authority's claim to the Kentucky Revenue Cabinet, if the request for administrative review is submitted to the authority and received by the authority within thirty (30) calendar days after the date the notice described in paragraph (a) of this subsection is sent.

(2) Setoff of amounts due from the State Treasurer pursuant to KRS 44.030.

(a) Notification.

1. The authority shall, not less than fifteen (15) calendar days prior to submitting the claim to the Kentucky State Treasurer for setoff, send written notification by U.S. First Class Mail to the last known address of a person against whom the authority has a claim of any indebtedness to the authority for a sum certain for which setoff is sought pursuant to KRS 44.030.

2. The notification shall contain sufficient information to identify the person and to inform the person of the amount of the claim to be set off, the authority's intention to set off the claim pursuant to KRS 44.030, and the right to dispute the claim. The notification may contain additional information as the authority may prescribe.

(b) Objection.

1. Any person, notified by the authority that an amount due from the State Treasurer may be withheld pursuant to KRS 44.030 may, within the time period specified in Section 2(2)(a) of this administrative regulation, petition the authority for a hearing in accordance with 11 KAR 4:030, Section 5. [subsection (3) of this section.]

2. The authority, or its designated representative, shall refrain from referring the authority's claim to the Kentucky State Treasurer, if the request for administrative review is submitted to the authority and received by the authority within fifteen (15) calendar days after the date the notice described in paragraph (a) of this subsection is sent.

(3) Defenses.

(a) Except as provided in paragraph (b) of this subsection, a debtor may assert any legal or equitable defense to a claim by the authority for setoff pursuant to subsections (1) and (2) of this section pertaining to the existence, amount or the person's liability on the

particular debt in question or the terms of a prior repayment schedule.

(b) The designated authority representative conducting an administrative review in accordance with 11 KAR 4:030, Section 4 or the hearing officer conducting a hearing pursuant to 11 KAR 4:030, Section 5 shall not consider as a defense any question of law or fact that has previously been adjudicated by a court of competent jurisdiction or that was previously raised in an administrative proceeding before the authority pursuant to 11 KAR 4:030 pertaining to the existence, amount, or the person's liability on the particular debt in question or the terms of a prior repayment schedule, except if the petitioner demonstrates that:

1. Circumstances have changed or new information is available; or

2. The prior decision substantially disregarded or ignored the defense, was arbitrary, capricious, not supported by the facts or made through fraud.

[(3) A hearing requested pursuant to this section shall be arranged and conducted in accordance with 11 KAR 4:030, Section 3(2) through (8), and if the petitioner disagrees in part or in whole with the final, written determination of the hearing officer, the petitioner may appeal the hearing officer's decision to the authority board in accordance with 11 KAR 4:030, Section 4.]

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: June 26, 1998

FILED WITH LRC: July 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, August 21, 1998 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, August 14, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX # (502) 696-7293.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Richard F. Casey

(1) Type and number of entities affected: There are currently approximately 32,000 borrowers of defaulted student loans, as of December 1997, with unpaid balances who are potentially subject to the remedies of setoff if they do not establish satisfactory repayment schedules. It is anticipated that for FY 1999 there will be an additional 11,000 borrowers default. These defaulted borrowers will be potentially subject to the remedies in this administrative regulation. In the current year, 15,171 borrowers have been certified for setoff of federal income tax refunds, 12,207 borrowers have been certified for setoff of state income tax refunds, and 140 claims for setoff of other state payments (including salary paid to state employees) have been submitted to the state Treasury for recovery of defaulted insured student loans. 4,458 individuals that defaulted in the past twelve months are believed to reside in Kentucky and are therefore, potentially subject to the remedies of setoff of any payments by the Commonwealth, including state income tax refunds, in addition to setoff of federal income tax refunds.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The administrative regulation provides a procedure for setoff of federal and state payments due a borrower owing a defaulted insured student loan. Cost of living would be affected only for those borrowers owing defaulted student loans who refuse to pay as agreed and necessitate



initiation of the setoff procedure resulting in withholding of state or federal income tax refunds and other payments. The administrative regulation would not have an impact upon employment. The proposed amendments to this administrative regulation will have no impact on the cost of living and employment in the state.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent from the public comments received: The proposed amendments to this administrative regulation will have no impact on the cost of doing business on any entity.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing cost (note any effects upon competition) for the:

1. First year following implementation: The proposed amendments to Sections 2 and 3 of this administrative regulation will result in a very minimal increase in paperwork requirements for the petitioner and little or no increase in paperwork requirements for the authority. The net impact of the proposed amendment to Section 2 of this administrative regulation is to require a petitioner disputing the authority's claim to submit to the authority, along with a written statement of appeal, documentation that supports the petitioner's position. The proposed amendment to Section 2 of this administrative regulation will also provide that issues raised and considered at a previous administrative hearing or review shall not be addressed at a hearing held under this administrative regulation. The net impact of the proposed amendment to Section 3 of this administrative regulation will be to provide for additional criteria for establishing an acceptable written repayment agreement for purposes of avoiding federal income tax refund setoff. The proposed amendment to Section 4 of this administrative regulation will affect no change in the compliance, reporting or paperwork requirements for either the petitioner or the authority. The net impact of the proposed amendment to Section 4 subsection (3) of this administrative regulation is to correct an erroneous reference to 11 KAR 4:030 and to remove language that indicates that a hearing officer's decision is final rather than recommended in accordance with KRS Chapter 13B.

2. Second and subsequent years: Same as #1 above.

(3) Effect on the promulgating body: The proposed amendments to this administrative regulation affect the types of documentation required to be submitted by the petitioner along with a written statement of appeal and the criteria for a written repayment agreement. These paperwork requirements are intended to follow established remedies for defaulted loans under other student financial assistance programs. Therefore, there is minimal increase in paperwork requirements for the authority.

(a) Direct and indirect costs or savings:

1. First year: The administrative regulation provides the procedures for recovery of defaulted insured student loans at minimal cost to the authority. For FY 1998 the authority has collected approximately \$6,028,635.13 through setoff of federal income tax refunds, approximately \$451,667.40 through setoff of state income tax refunds, and \$109,224.28 through claims for setoff of other state payments (including salary paid to state employees). It is anticipated that for FY 1999 there will be additional defaulted insured student loans, potentially resulting in an increase in the amount of money collected through the remedy of setoff of federal and state income tax refunds and setoff of other state payments. The costs associated with implementing this administrative regulation are the variable costs attributable to postage and processing to notify the debtor of the impending action, the costs of preparing for a hearing when requested, and the costs of conducting a hearing when requested.

2. Continuing costs or savings: Same as #1 above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The proposed amendments to this administrative regulation may result in a negligible increase in paperwork for the authority because of the documentation required to be filed by the debtor with the written statement of appeal, but this process expedites the preparation for and conduct of the hearing. The volume of paperwork can not be estimated since it is dependent upon the unknown variable of the number of accounts submitted for recovery through setoff of federal and state payments, the number of persons who enter into voluntary repayment agreements, and the number of debtors that may request a hearing.

(4) Assessment of anticipated effect on state and local revenues: The remedy of setoff of state and federal payments is an important tool to the authority in the recovery of defaulted loans that would otherwise not be collected by voluntary payments. Therefore, implementation of the process authorized by federal law and embodied in the administrative regulation is anticipated to increase the authority's receipts. The funds collected on defaulted student loans are subject to federal restrictions and must be deposited into a trust fund to be used only for specific purposes pertaining to the student loan program. Therefore, any recovery through this process would not have an impact upon general state or local revenues. It is anticipated that the proposed amendments to this administrative regulation will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The authority maintains a federally restricted trust fund in accordance with KRS 164.754(2) and 34 CFR sec. 682.410(a) comprised of various receipts from operation of the insured student loan program, including, but not limited to, amounts recovered from debtors on defaulted student loans. This fund may be expended under the federal restrictions only for purposes of administering the insured student loan program.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: The administrative regulation itself sets out a process for initiation of setoff of state and federal payments due a borrower owing a defaulted insured student loan as one remedy for the recovery of defaulted insured student loans. Consequently, the economic impact of the process is to enhance the recovery of public funds and maintain the financial stability of the insured student loan program. The proposed amendments to this administrative regulation only set forth additional requirements for the documentation to be submitted with a petitioner's written statement of appeal, additional criteria for the establishment of a written repayment agreement, the correction of an erroneous reference to 11 KAR 4:030, and the removal of language that a hearing officer's decision is final rather than recommended in accordance with KRS Chapter 13B. It is anticipated that the proposed amendments to this administrative regulation will have no economic impact in the geographical area in which it will be implemented.

(b) Kentucky: Same as (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods for the process of setoff of federal income tax refund, setoff of state income tax refund and setoff of other state payments were considered. The requirements of notice and administrative review for setoff of federal payments is authorized by federal statute in 31 USC Sections 3718 and 3720A and by federal regulations in 34 CFR Section 30.33. Setoff of state payments, including state income tax refunds is authorized pursuant to KRS 44.030 and 131.560. The process for notification prior to state income tax refund setoff and state treasury payment setoff is consistent with KRS 131.560 and similar procedures for the federal income tax refund setoff process. The hearing procedures involved in the set off of state payments are governed by KRS Chapter 13B.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no effect on public health and environmental welfare.

(b) State whether a detrimental effect on the environmental or public health would result if not implemented: There is no effect on public health and environmental welfare.

(c) If detrimental effect would result, explain detrimental effect: The proposed amendments to this administrative regulation will have no effect on public health and environmental welfare.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: There is no known conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no known conflict.

(10) Any additional information of comments:

(11) Tiering: Was tiering applied? No. The concept of tiering is

not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute and, consequently, does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and due process for all persons affected by this administrative regulation.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Cite the federal statute or regulation constituting the federal mandate. 34 CFR 30.33, 31 USC 3718, 3720A.

2. State in sufficient detail the state compliance standards: This administrative regulation sets forth the process for notification and appeal afforded to persons indebted to the authority in implementing a set off of authority claims through the Kentucky Revenue Cabinet, the State Treasurer, or the federal government. For purposes of setoff of federal payments to recover a defaulted insured student loan, the notice sent to a debtor shall contain information sufficient to identify the person and to inform the person of the amount of the claim and inform the debtor that the debt is past due and the authority intends to refer the debt for offset to the federal government. The notice also informs the debtor that he has an opportunity to inspect and copy authority records regarding the existence, amount, enforceability, or past-due status of the debt; obtain a review within the authority of the existence, amount, enforceability, or past-due status of the debt; and enter into a written agreement with the authority to repay the debt. If a debtor wants to inspect and copy authority records regarding the existence, amount, enforceability, or past-due status of the debt, the debtor shall file a written request to inspect and copy the records within 20 days after the date of the notice. The authority shall refrain from referring the authority's claim to the federal government if the person owing the debt enters into a written repayment agreement to make monthly payments, and submits a downpayment of the lesser of the outstanding balance of the debt \$250 and the first payment to the authority and the payment is received by the authority by the latest of the 65th day after the date of the notice, if the debtor did not request a review or an opportunity to inspect and copy records of the authority; the seventh calendar day after the date the authority's final written determination is rendered and mailed to the debtor, if the debtor if the debtor filed a timely request for a review; or the 15th day after the date on which the authority made available relevant records regarding the debt, if the debtor filed a timely request to inspect and copy authority records. If a debtor wants a review of the existence, amount, enforceability, or past-due status of the debt, the debtor shall submit a written request for review at the address specified in the notice by the later of 65 days after the date of the notice, or, if the debtor has timely requested an opportunity to inspect and copy records, 15 days after the date on which the authority makes available to the debtor the relevant, requested records. If the petitioner disagrees with the final, written determination of the authority, the petitioner may submit a written request for review of the decision by the Secretary of the U.S. Department of Education.

3. State in sufficient detail the minimum or uniform standards contained in the federal mandate. The federal mandate requires the authority, as a creditor agency, to ensure by adoption of standards, policies, and procedures that prior to submitting a claim for a setoff the debtor is notified that his debt is delinquent and that the authority intends to collect the debt through a setoff claim. In the notification, the debtor must be informed of his right to review the applicable records of the authority, to seek a review of the determination of the debt, and the right to enter into an agreement to repay the debt. 31 USC 3720A pertains to reduction of tax refund by amount of a debt. That section provides that any federal agency (including the U.S. Department of Education) that is owed by a person a past-due, legally enforceable debt (including debt administered by a third party acting as an agent for the federal government such as defaulted

insured student loans held by the authority) shall notify the Secretary of the Treasury at least once each year of the amount of such debt. The statute further provides that no federal agency may take action to set off a tax refund with respect to any debt until the agency notifies the person incurring the debt that the agency proposes to take action with respect to the debt; gives the person at least 60 days to present evidence that all or part of the debt is not past-due or not legally enforceable; considers any evidence presented by the person and determines that an amount of the debt is past due and legally enforceable; satisfies such other conditions as the secretary may prescribe to ensure that the determination made with respect to the debt is valid and that the agency has made reasonable efforts (determined on a government-wide basis) to obtain payment of the debt; and certifies that reasonable efforts have been made by the agency (pursuant to regulations) to obtain payment of the debt. 31 USC 3718 provides in pertinent part that a federal agency shall provide in a contract for collection services on a federal debt that the head of the agency retains the authority to resolve a dispute, compromise a claim, end collection action, and refer a matter to the Attorney General to bring a civil action. 34 CFR 30.33 establishes procedures under which the U.S. Department of Education certifies past-due accounts for setoff against federal tax refunds. That administrative regulation provides that the notice sent to a debtor shall contain information sufficient to identify the person and to inform the person of the amount of the claim and inform the debtor that the debt is past due and the authority intends to refer the debt for offset to the federal government. The notice also informs the debtor that he has an opportunity to inspect and copy authority records regarding the existence, amount, enforceability, or past-due status of the debt; obtain a review within the authority of the existence, amount, enforceability, or past-due status of the debt; and enter into a written agreement with the authority to repay the debt. If a debtor wants to inspect and copy authority records regarding the existence, amount, enforceability, or past-due status of the debt, the debtor shall file a written request to inspect and copy the records within 20 days after the date of the notice. If a debtor wants to enter into a written agreement with the authority to repay the debt to avoid setoff of federal payments, the debtor must agree to repay the debt under terms acceptable to the authority and make the first payment due under the agreement by the latest of the 65th day after the date of the notice, if the debtor did not request a review or an opportunity to inspect and copy records of the authority; the seventh calendar day after the date the authority's final written determination is rendered and mailed to the debtor, if the debtor if the debtor filed a timely request for a review; or the fifteenth day after the date on which the authority made available relevant records regarding the debt, if the debtor filed a timely request to inspect and copy authority records. If a debtor wants a review of the existence, amount, enforceability, or past-due status of the debt, the debtor shall submit a written request for review at the address specified in the notice by the later of 65 days after the date of the notice, or, if the debtor has timely requested an opportunity to inspect and copy records, 15 days after the date on which the authority makes available to the debtor the relevant, requested records. If the petitioner disagrees with the final, written determination of the authority, the petitioner may submit a written request for review of the decision by the Secretary of the U.S. Department of Education.

4. In detail, state whether this administrative regulation will impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate. If the promulgating administrative body is permitted to select from within a range, state the reasons for the specific selection. Discuss each state requirement that is stricter than the federal mandate in a separate paragraph. The administrative regulation does not impose stricter requirements than the federal mandate. The federal mandate establishes standards and procedures governing the certification of accounts by the U.S. Department of Education to the U.S. Treasury Department. Through contracts with the authority, the U.S. Secretary of Education provides that the authority will certify defaulted insured student loans to the Department of Education in accordance with procedures applicable to the department in 34 CFR 30.33. The authority is provided with some discretion on how the requirements of the federal mandate are implemented. For instance, the authority could provide notice to the debtor more than 65 days in advance,

but may not provide less than 60 days prior notice. Also, the debtor has the opportunity to avoid the setoff claim by entering into an agreement to repay the debt on terms satisfactory to the authority. The administrative regulation specifies that the authority shall refrain from referring the claim for setoff if the debtor enters into a written repayment agreement to make monthly payments and submits a downpayment of the lesser of the outstanding balance of the debt or \$250 dollars and the first payment to the authority and the payment is received by the authority by the latest of the 65th day after the date of the notice, if the debtor did not request a review or an opportunity to inspect and copy records of the authority; the seventh calendar day after the date the authority's final written determination is rendered and mailed to the debtor, if the debtor if the debtor filed a timely request for a review; or the 15th day after the date on which the authority made available relevant records regarding the debt, if the debtor filed a timely request to inspect and copy authority records.

5. For each state requirement that is stricter than the federal mandate, state the justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. There are no state requirements that are stricter than the federal mandate.

**KENTUCKY HIGHER EDUCATION  
ASSISTANCE AUTHORITY  
Division of Student Services  
(Amendment)**

**11 KAR 5:001. Definitions pertaining to 11 KAR Chapter 5.**

RELATES TO: KRS 164.740 to 164.785[~~1994 Ky. Acts ch. 36~~]

STATUTORY AUTHORITY: KRS [19A-100,] 164.748(4),  
164.753(4) [1994 Ky. Acts ch. 36]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 264.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. KRS 164.753(2) authorizes the authority to promulgate administrative regulations pertaining to grants. The Kentucky Higher Education Assistance Authority administers grant programs to provide student financial assistance to students for attendance at Kentucky postsecondary educational institutions. This administrative regulation sets forth definitions of terms common to multiple administrative regulations in this chapter. [This amendment is necessary to reflect a change in the CAP Grant Program made by recent legislation.]

Section 1. Definitions. For purposes of Chapter 5 of Title 11 of the Kentucky Administrative Regulations, the terms listed below shall have the following meanings:

(1) "Academic year" means a period of time, usually eight (8) or nine (9) months, during which a full-time student would normally be expected to complete the equivalent of two (2) semesters, two (2) trimesters, three (3) quarters, 900 clock hours, twenty-four (24) semester hours, or thirty-six (36) quarter hours of instruction.

(2) The definition of "authority" is governed by KRS 164.740(1).

(3) The definition of "business school" is governed by KRS 164.740(3).

(4) "College access program" or "CAP" means the program of student financial assistance grants authorized under KRS 164.7535 [1994 Ky. Acts ch. 36] to assist financially needy part-time and full-time undergraduate students attending an educational institution.

(5) The definition of "college" is governed by KRS 164.740(4).

(6) "Educational expenses" means tuition and fees, books and supplies, room and board or reasonable living expenses, reasonable miscellaneous personal expenses, and reasonable transportation costs for the academic period of the grant application.

(7) "Educational institution" means a participating institution located in Kentucky which:

(a) Offers an eligible program of study;

(b) Enrolls as regular students only persons having either a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, or persons who are beyond the age of compulsory school attendance in the Commonwealth of Kentucky and have the ability to benefit from the training offered by

the institution; and

(c) For purposes of the college access program a business school, college, school of nursing or vocational school, and meets the requirements of the federal act; or

(d) For purposes of the Kentucky tuition grant program, is a private[~~nonprofit~~] college whose institutional programs are not comprised solely of sectarian instruction.

(8) The term "eligible noncitizen" means an individual who is either:

(a) A U.S. national;

(b) A U.S. permanent resident with an Alien Registration Receipt Card (1-151 or 1-551);

(c) A person with a Departure Record (I-94) from the U.S. Immigration and Naturalization Service showing any one (1) of the following designations:

1. "Refugee";

2. "Asylum granted";

3. "Indefinite parole" and/or "humanitarian parole";

4. "Cuban-Haitian entrant".

Students who are in the U.S. on an F1 or F2 student visa only or a J1 or J2 exchange visitor visa only or a G series visa only are not eligible for KHEAA grant assistance.

(9) "Eligible program of study" means an undergraduate program offered by an educational institution which:

(a) Is of at least two (2) academic years duration; and

(b) For purposes of the Kentucky Tuition Grant Program leads to a degree in a field other than theology, divinity or religious education at the institution at which the student is enrolled; and

(c) For purposes of the CAP Grant Program, leads to a certificate, diploma, or degree in a field other than theology, divinity or religious education.

(10) The term "expected family contribution" means the amount that a student and his family are expected to contribute toward the cost of the student's education determined by applying federal methodology set forth in Title IV, Part F of the federal act to the information that the student and his family provided on the application.

(11) The definition of "federal act" is governed by KRS 164.740(9).

(12) "Full-time student" means a student who is carrying a full-time academic workload, other than by correspondence, measured in terms of:

(a) Course work or other required activities as determined by the institution in which the student is enrolled, including any combination of courses, work experience, research or special studies which the institution requires of the student to consider him as being engaged in full-time study, and which amounts to the equivalent of a minimum of twelve (12) semester hours or twelve (12) quarter hours per academic term for institutions utilizing trimesters, semesters, or quarter hour system, or which consists of a program requiring the minimum of twenty-five (25) clock hours per week for those institutions that do not utilize such systems; and

(b) The tuition and fees customary for full-time study at that institution.

(13) The definition of "grant" is governed by KRS 164.740(10).

(14) "Kentucky tuition grant" or "KTG" means the program of student financial assistance grants authorized by KRS 164.780 and 164.785 for residents of Kentucky who bear the major costs of attending an educational institution and who demonstrate financial need.

(15) "KHEAA grant" means awards of student financial assistance grants under the college access program or the Kentucky tuition grant program or a combination of the two (2).

(16) "KHEAA grant limit" means an aggregate limitation on KHEAA grant awards to an individual, measured in terms of the number of semesters during which a KHEAA grant is disbursed to a full-time student and not fully refunded. The limit is depleted by one (1) semester:

(a) For any KHEAA grant disbursed to a full-time student in a semester; or

(b) By a CAP grant recipient enrolled less than full time, who receives the cumulative equivalent amount of CAP grant that would have been received by a full-time CAP grant recipient using the then current maximum CAP grant.

(17) "KHEAA grant program officer" or "KGPO" means the official designated on the administrative agreement, pursuant to KRS 164.748(5), to serve as the educational institution's on-campus agent

to certify all institutional transactions and activities with respect to the authority's grant programs.

(18) "Overaward" means receipt of financial assistance from all sources in excess of a student's need determined in accordance with 11 KAR 5:120 through 5:145.

(19) "Resident of Kentucky" or "resident" means a person who is classified as an in-state student in accordance with criteria set forth in the "Residency Classification Policy" at 13 KAR 2:040.

(20) "Total cost of education" for an academic year means an amount determined for each applicant by the following formula: normal tuition and fees charged by the institution chosen by the applicant, plus maximum board contract amount, plus minimum room contract amount.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: June 26, 1998

FILED WITH LRC: July 14, 1998 at 2 p.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on Friday, August 21, 1998 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, August 14, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX # (502) 696-7293.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Richard F. Casey

(1) Type and number of entities affected: This regulation defines or references certain statutory definitions of terms commonly used in the administration of the KHEAA Grant program. Under the Kentucky Tuition Grant Program, 5,976 students attending 20 post-secondary institutions received grants for the 1997-98 academic year. A statutory change in the 1998 Regular Session of the General Assembly permitted participation by for-profit institutions that are otherwise eligible. That change necessitated the current proposed amendment of this administrative regulation to conform a definition to that statutory change. The change effects one institution in Kentucky for the 1998-99 academic year and is expected to result in initial awards to approximately 1082 students attending that institution.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The administrative regulation itself merely defines terms commonly used in administration of the KHEAA grant programs. Therefore it has no direct or indirect cost or savings respecting the cost of living or employment. The change in the Kentucky Tuition Grant program during the 1998 Regular Session of the General Assembly, to permit participation by for-profit institutions that are otherwise eligible, is expected to result in \$1.6 million in grant awards to students to pay educational costs of attending the one additional institution that will become eligible for the 1998-99 academic year as the result of the statutory change.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent from the public comments received: The amendment is anticipated to have no impact on the cost of doing business of any entity.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing cost (note any effects upon competition) for the:

1. First year following implementation: The amendment affects no change in the compliance, reporting or paperwork requirements

of any participating institution or student and is anticipated to have no effect upon competition.

2. Second and subsequent years: Same as #1 above.

(3) Effect on the promulgating body:

(a) Direct and indirect costs or savings:

1. First year: The administrative regulation itself merely defines terms commonly used in administration of the KHEAA grant programs. Therefore it has no direct or indirect cost or savings respecting the promulgating body. The change in the administrative regulation merely conforms a defined term to a statutory change.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The administrative regulation itself merely defines terms commonly used in administration of the KHEAA grant programs. There is no change in the paperwork or reporting requirements for the promulgating body.

(4) Assessment of anticipated effect on state and local revenues: None. The administrative regulation itself merely defines terms commonly used in administration of the KHEAA grant programs. The change in the Kentucky Tuition Grant Program during the 1998 Regular Session of the General Assembly, to permit participation by for-profit institutions that are otherwise eligible, is expected to result in \$1.6 million in grant awards to students to pay educational costs of attending the one additional institution that will become eligible for the 1998-99 academic year as the result of the statutory change.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The administrative regulation itself merely defines terms commonly used in administration of the KHEAA grant programs. Therefore, no revenue is necessary to implement this particular administrative regulation. However, grants for students under the College Access Program and Kentucky Tuition Grant Program are funded by appropriations from the General Fund and administrative costs are borne by the authority through receipts of the authority.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: No public comments were received. The amendment simply revises the definitions used in 11 KAR Chapter 5 KHEAA Grant Programs. Students that receive grants under the programs will experience an economic impact to the extent that funds may be used by the student for postsecondary education related expenses, thus enabling the student to pursue higher education and potentially increase their lifelong earning capacity.

(b) Kentucky: Same as (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered. The proposed amendment merely modifies a defined term to conform to a statutory change.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no effect upon public health or the environment resulting from the amendment of this administrative regulation.

(b) State whether a detrimental effect on the environmental or public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: There is no known conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no known conflict.

(10) Any additional information of comments: None

(11) Tiering: Was tiering applied? No. The concept of tiering is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute, and consequently, does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem

to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

**KENTUCKY HIGHER EDUCATION  
ASSISTANCE AUTHORITY  
Division of Student Services  
Kentucky Educational Savings Plan Trust  
(Amendment)**

**11 KAR 12:010. Kentucky Educational Savings Plan Trust definitions.**

RELATES TO: KRS 164A.300 to 164A.380

STATUTORY AUTHORITY: KRS 164A.325(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.325(9) provides that the board shall have the power to promulgate rules and administrative regulations to carry out and effectuate the purposes and objectives of the Kentucky Educational Savings Plan Trust [(KRS Chapter 164A). KRS 164A.305 defines certain terms and words, but does not define other terms and words which are necessary to carry out and accomplish the purposes, objectives and provisions of KRS 164A.300 through 164A.380]. This administrative regulation defines additional terms and words which shall be interpreted and applied in a uniform manner when used in the participation agreement, forms, notices and other instruments related to the administration of the trust. [This amendment is necessary to add defined terms previously separately defined in multiple administrative regulations in 11 KAR Chapter 12.]

Section 1. Definitions. The language used in the administration of the trust contains some legal and technical terms as well as everyday terms which, of necessity, have specialized meaning. The following definitions shall be controlling in the interpretation and application of these words and phrases, except where the context clearly requires another interpretation:

(1) [The term] "Academic period" means [shall mean] one (1) semester or one (1) quarter or an equivalent period for a vocational technical institution.

(2) [The word] "Account" means [shall denote] the account in the program fund established and maintained under the trust for a beneficiary.

(3) [The term] "Account balance" means [shall mean] the fair market value of an account as of the accounting date.

(4) [The term] "Accounting date" means [shall mean] the date, not later than the last business day of each quarter as determined by the program administrator.

(5) [The term "administrative fee" shall mean the fee charged by the trust on cancellation or termination, which is the lesser of two (2) percent of the amount refunded or twenty-five (25) dollars, or for multiple substitution of beneficiaries, twenty-five (25) dollars.

(6) The definition of "Beneficiary" is defined in [governed by] KRS 164A.305(3).

(6) [(7) The definition of] "Benefits" is defined in [governed by] KRS 164A.305(4).

(7) [(8) The definition of] "Board" is defined by [governed by] KRS 164A.305(5).

(8) "Dependent person" means a person who is unable to meet all of the criteria listed in subsection (12) of this section.

(9) [The term] "Designated date" means [shall mean] the date on which each beneficiary is eligible to be designated in a participation agreement.

(10) "Domicile" means a person's true, fixed, and permanent home. It is the place where the person intends to remain, and to which the person expects to return without intending to establish a new domicile elsewhere. "Legal residence" and domicile convey the same notion of permanence and are used interchangeably.

(11) "Effective date" means [shall mean] the date which a partici-

pant may enter into a participation agreement with the trust, which is on or after July 1, 1989.

[(11) The words "hardship" or "emergency" shall denote those circumstances and conditions of a sudden nature, including catastrophic illness, which deprive the participant or his dependent from the basic necessities or comforts of life or proper health care.]

(12) "Independent" means a person who meets all of the following criteria. An independent person is one (1):

(a) Whose parent has not claimed such person as a dependent on federal or state income tax returns for the tax year preceding the date of application for reclassification of residency status;

(b) Who demonstrates no financial dependence upon parent(s); and

(c) Whose parents' income is not taken into account by any private or governmental agency furnishing educational financial assistance to the person, including scholarships, loans, and other assistance.

(13) [The definition of] "Institution of higher education" is defined in [governed by] KRS 164A.305(8).

(14) [(13) The term] "Kentucky ties" means a participant or beneficiary who has [shall mean participants or beneficiaries who have] contact or ties with the Commonwealth, such as current or former residence or employment in the Commonwealth, or family members with current or former residence in the Commonwealth.

(15) [(14) The term] "minimum rate of return" means [shall mean] the minimum earnings of four (4) percent guaranteed by the trust on payments made by the participant.

(16) [(15) "Notice to delay benefits under participation agreement" means [shall mean] the form which a participant submits to the program administrator of the trust to delay benefits under a participation agreement, after the beneficiary has attained the age of eighteen (18).

(17) [(16) "Notice to extend payments under participation agreement" means [shall mean] the form which a participant submits to the program administrator of the trust to extend payments under a participation agreement beyond the beneficiary's age of eighteen (18).

(18) [(17) "Notice to increase or decrease payments under participation agreement" means [shall mean] the form which a participant submits to the program administrator of the trust to increase or decrease payments under a participation agreement.

(19) [(18) "Notice to preauthorize debit" means [shall mean] the form which a participant completes to notify the participant's financial institution to debit or charge the participant's checking or savings account for payments due under the participation agreement.

(20) [(19) "Notice to substitute beneficiary" means [shall mean] the form which a participant submits to the program administrator of the trust to substitute a beneficiary.

(21) [(20) "Notice to terminate the participation agreement" means [shall mean] the form which a participant submits to the program administrator of the trust to terminate a participation agreement under the trust.

(22) [(21) "Notice to use trust benefits" means [shall mean] the form which a participant submits to the program administrator of the trust to notify the trust of the date benefits are to begin and level of benefits paid.

(23) [(22) "Notice to authorize payroll deduction" means [shall mean] the form which a participant submits to the program administrator of the trust to direct the participant's employer to deduct payments from the participant's payroll deduction check and forward that amount to the trust.

(24) "Parent" means one (1) of the following:

(a) A person's father or mother; or

(b) A court-appointed legal guardian. The term "parent" shall not apply if the guardianship has been established primarily for the purpose of conferring the status of resident on a person.

(25) [(23) The term] "Participant" is defined in KRS 164A.305(10).

(26) [(24) The term] "Participation agreement" is defined in KRS 164A.305(11).

(27) [(25) The word] "Payments" means [shall denote] the money paid by the participant to the trust under the participation agreement.

(28) [(26) The term] "Payment book" means [shall mean] the book which contains individual coupons, designating the amount and due date of each payment.

(29) [(27) The term] "Program administrator" is defined in KRS 164A.305(12).



## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

(30) ~~[(28) The term]~~ "Program fund" is defined in KRS 164A.305(13).

(31) ~~[(29) The terms]~~ "Property settlement agreement" or "decree of dissolution by the court" means ~~[shall mean]~~ the agreement or judgment approved or entered by a court of competent jurisdiction which sets forth the participant's right, if any, to the participant's interest in the participation agreement.

(32) ~~[(30) The term]~~ "Trust year" means ~~[shall mean]~~ the fiscal year beginning July 1 and ending the following June 30 of each year for purposes of the calculation of benefits.

(33) ~~[(31) The term]~~ "Vested participation agreement" is defined in KRS 164A.305(15).

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: May 15, 1998

FILED WITH LRC: July 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, August 21, 1998 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, August 14, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX # (502) 696-7293.

### REGULATORY IMPACT ANALYSIS

Agency Contact: Richard F. Casey

(1) Type and number of entities affected: The regulation affects residents of any state who choose to participate in the Kentucky Higher Educational Savings Plan Trust. Qualifying participants or beneficiaries would be those having "Kentucky ties" and beneficiaries who have not attained the age of 15 as of the designation date. The extent of those who will be participants and beneficiaries is unknown. Although the number of accounts grows daily, there are currently over 2800 accounts established and all will eventually be affected by this amendment.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The proposed amendment to this regulation will impose no new costs or provide savings to participants. The net impact is to broaden, in accordance with statutory changes, the definitions used for this program.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent from the public comments received: The amendment is anticipated to have no impact on the cost of doing business of any entity.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing cost (note any effects upon competition) for the:

1. First year following implementation: The amendment affects no change in the compliance, reporting or paperwork requirements of any participant or beneficiary and is anticipated to have no effect upon competition.

2. Second and subsequent years: Same as #1 above.

(3) Effect on the promulgating body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This amendment does not affect any change in the reporting or paperwork of the promulgating body.

(4) Assessment of anticipated effect on state and local revenues: None. Funds held in the trust are contributed and owned by the participant until utilization for the benefit of the beneficiary.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds held in the trust are contributed and owned by the participant until utilization for the benefit of the beneficiary.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: There is no anticipated economic impact from the amendment. The amendment simply revises the definitions used in 11 KAR Chapter 12 Kentucky Educational Savings Plan Trust Program. Designated beneficiaries will experience an economic impact to the extent that funds in the trust may be used by the beneficiary for postsecondary education related expenses, thus enabling the beneficiary to pursue higher education and potentially increase their lifelong earning capacity. It is anticipated that such expenditures will have negligible economic impact on the institutions or communities.

(b) Kentucky: Same as (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This amendment merely conforms the administrative regulation to a statutory change.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no effect upon public health or the environment resulting from the amendment of this administrative regulation.

(b) State whether a detrimental effect on the environmental or public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: There is no known conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no known conflict.

(10) Any additional information of comments: None

(11) Tiering: Was tiering applied? No. The concept of tiering is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute, and consequently, does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

### KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY Division of Student Services Kentucky Educational Savings Plan Trust (Amendment)

11 KAR 12:040. Residency classification for Kentucky Educational Savings Plan Trust vested participation agreements.

RELATES TO: KRS 164A.305(15), 164A.330(9)

STATUTORY AUTHORITY: KRS 164A.325(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.325(9) provides that the board shall have the power to promulgate rules and administrative regulations to carry out and effectuate the purposes and objectives of the Kentucky Educational Savings Plan Trust. KRS 164A.305(15) ~~[provides that]~~ "vested participation agreement" and [means a participation agreement which has been in



full force and effect during eight (8) continuous years of residency of the beneficiary in the Commonwealth while participating in the trust.] KRS 164A.330(9) requires that each participation agreement shall provide that for a vested participation agreement, the beneficiary shall be considered a resident of the Commonwealth for tuition purposes if the beneficiary enrolls in an institution of higher education in Kentucky prior to enrollment in any other educational institution. This administrative regulation is necessary [not only] to clarify, interpret, and establish the standards for proof of residency of a beneficiary for a vested participation agreement [tuition purposes, who would not otherwise be classified as a resident except for participating in the trust, but to establish proof of residency of a beneficiary. This amendment is necessary to eliminate definitions common to multiple administrative regulations, which definitions are being added to a separate administrative regulation.]

Section 1. [Definitions. (1) The term "dependent person" means a person who is unable to meet all of the criteria listed in subsection (4) of this section:

(2) The term "domicile" means a person's true, fixed, and permanent home. It is the place where the person intends to remain, and to which the person expects to return without intending to establish a new domicile elsewhere. "Legal residence" and domicile convey the same notion of permanence and are used interchangeably.

(3) The term "independent" means a person who meets all of the following criteria: An independent person is one:

(a) Whose parent has not claimed such person as a dependent on federal or state income tax returns for the tax year preceding the date of application for reclassification of residency status;

(b) Who demonstrates no financial dependence upon parent(s); and

(c) Whose parents' income is not taken into account by any private or governmental agency furnishing educational financial assistance to the person, including scholarships, loans, and other assistance;

(4) The term "parent" means one (1) of the following:

(a) A person's father or mother; or

(b) A court-appointed legal guardian. The term "parent" shall not apply if the guardianship has been established primarily for the purpose of conferring the status of resident on a person:

Section 2.] Residency Requirement. (1) A person [An individual] who has at any time been a resident of the Commonwealth of Kentucky for at least eight (8) continuous years and was designated as a beneficiary under a participation agreement that is in full force and effect for that entire eight (8) year period, shall be deemed to have a vested participation agreement, even if the beneficiary leaves the state prior to enrollment in an institution of higher education.

(2) For purposes of subsection (1) of this section, a participation agreement shall be deemed to be in full force and effect if at the end of the eight (8) year period the total contributions of principal to the account that remain in the account balance equals \$2400 and the participation agreement has not been cancelled at the time that the beneficiary first enrolls in an institution of higher education.

Section 2. [3.] Proof of Residency. (1) At any time following the expiration of the period of eight (8) years of continuous residency by the beneficiary, either the participant or the beneficiary may submit to the program administrator evidence of the residency to establish a vested participation agreement. Evidence submitted on behalf of a dependent person shall pertain to the domicile of either parent during the claimed period of residency. Individuals who enroll in college immediately following graduation from high school and remain enrolled are treated as dependent persons unless the contrary is evident from the information submitted. In such cases, domicile shall be inferred from the student's permanent address, parent's mailing address, or location of high school of graduation.

(2) A person claiming independent status shall document independent status under Section 1(4) of this administrative regulation and shall demonstrate by clear and convincing evidence that domicile in Kentucky has been established by that person's acts.

(3) The determination of residency shall be based upon verifiable circumstances or actions. No single fact is paramount, and each situation shall be evaluated to identify those facts which are essential to the

determination of domicile.

(4) The following facts, although not conclusive, shall have probative value in support of a claim for resident classification:

(a) Full-time employment in Kentucky or transfer to an employer in contiguous area while maintaining domicile in Kentucky;

(b) Filing of Kentucky resident income tax return for each applicable calendar year of claimed residency status;

(c) Attendance as a full-time, nonresident student at an out-of-state institution of higher education while determined to be a resident of Kentucky;

(d) Abandonment of a former domicile and establishing domicile in Kentucky with attendance at an institution of higher education following and only incidental to such change in domicile;

(e) Payment of occupational taxes in Kentucky;

(f) Payment of real property taxes in Kentucky;

(g) Payment of intangible personal property taxes in Kentucky;

(h) Ownership of real property in Kentucky, if the property was used as a residence during the claimed period of residency status;

(i) Long-term lease of housing during the claimed period of residency status;

(j) Kentucky automobile registration during the claimed period of residency;

(k) Kentucky driver's license during the claimed period of residency status;

(l) Registration as a Kentucky voter during the claimed period of residency;

(m) Corroborating affidavit of a nonrelative.

(5) The determination of residency shall be based upon verifiable circumstances or actions and authenticated copies of relevant documentation. The program administrator may request additional documentation to clarify circumstances and formulate a decision that considers all relevant facts.

Section 3. [4.] Nontransferability of Vested Participation Agreement. Although the participant may freely substitute beneficiaries under a participation agreement, the residency status acquired by a beneficiary of a vested participation agreement shall not be used to confer such status on a substituted beneficiary, nor shall the residency of one (1) beneficiary be taken into account in the establishment of a vestment period of substituted beneficiary.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: May 15, 1998

FILED WITH LRC: July 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, August 21, 1998 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, August 14, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX # (502) 696-7293.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Richard F. Casey

(1) Type and number of entities affected: The regulation affects residents of any state who choose to participate in the Kentucky Higher Educational Savings Plan Trust. Qualifying participants or beneficiaries would be those having "Kentucky ties" and beneficiaries who have not attained the age of 15 as of the designation date. The extent of those who will be participants and beneficiaries is unknown. Although the number of accounts grows daily, there are currently over 2800 accounts established and all will eventually be

affected by this amendment.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The proposed amendment to this administrative regulation will impose no new costs or provide savings to participants. The net impact is to delete the section containing the definitions for the regulations (these are now located in 11 KAR 12:010) and to prescribe the conditions for a participation agreement to be deemed in full force and effect by calculating the aggregate account balance that would amass over the eight year period of vestment using the minimum \$25 contribution specified in the participation agreement.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent from the public comments received: The amendment is anticipated to have no impact on the cost of doing business of any entity.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing cost (note any effects upon competition) for the:

1. First year following implementation: The amendment affects no change in the compliance, reporting or paperwork requirements of any participant or beneficiary and is anticipated to have no effect upon competition. The intent of the amendment is to preclude a participant from abusing the intent of a vested participation agreement by establishing an agreement and making a single minimum \$25 deposit, then leaving the agreement in force for at least 8 years, merely to take advantage of in-state resident tuition rates.

2. Second and subsequent years: Same as #1 above.

(3) Effect on the promulgating body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: The intent of the amendment is to preclude a participant from abusing the intent of a vested participation agreement by establishing an agreement and making a single minimum \$25 deposit, then leaving the agreement in force for at least 8 years, merely to take advantage of in-state resident tuition rates.

(b) Reporting and paperwork requirements: This amendment does not affect any change in the reporting or paperwork of the promulgating body.

(4) Assessment of anticipated effect on state and local revenues: None. Funds held in the trust are contributed and owned by the participant until utilization for the benefit of the beneficiary.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds held in the trust are contributed and owned by the participant until utilization for the benefit of the beneficiary.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: There is no anticipated economic impact from the amendment. The amendment simply deletes the definitions used in this particular administrative regulation and sets forth the conditions for a participation agreement to be deemed in full force and effect. Any economic impact arising from the amendment would arise from precluding a participant from abusing the intent of a vested participation agreement by establishing an agreement and making a single minimum \$25 deposit, then leaving the agreement in force for at least 8 years, merely to take advantage of in-state resident tuition rates.

(b) Kentucky: Same as (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This amendment merely clarifies the conditions for a participation agreement to be deemed in full force and effect by calculating the aggregate account balance that would amass over the 8 year period of vestment using the minimum \$25 contribution specified in the participation agreement. This ensures that the participant is an active saver in the Savings Plan Trust during the 8 year vestment period in order to qualify the participation agreement as vested, entitling the beneficiary to in-state tuition rates.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no effect upon public health or the environment resulting from the amendment of this administrative regulation.

(b) State whether a detrimental effect on the environmental or public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: There is no known conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no known conflict.

(10) Any additional information of comments: None

(11) Tiering: Was tiering applied? No. The concept of tiering is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute, and consequently, does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

KENTUCKY HIGHER EDUCATION  
ASSISTANCE AUTHORITY  
Division of Student Services  
Kentucky Educational Savings Plan Trust  
(Amendment)

11 KAR 12:060. Cancellation and payment of refund.

RELATES TO: KRS 164A.325(5), 164A.350 [164A.345]

STATUTORY AUTHORITY: KRS 164A.325(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.325(9) provides that the board shall have the power to promulgate rules and administrative regulations to carry out and effectuate the purposes and objectives of the Kentucky Educational Savings Plan Trust. KRS 164A.350(2) [164A.345(1)] provides, in pertinent part, that any participant may cancel a participation agreement [at-will and specifies the amount of refund the participant is entitled to at various stages]. That statute authorizes a penalty [an administrative fee] to be charged by the trust. This administrative regulation is necessary to establish the procedures for cancellation of the participation agreement and refund of the account balance and to specify the penalty [administrative fee]. This amendment is necessary to conform the language to the definition in 11 KAR 12:010, Section 1(5).

Section 1. Cancellation. (1) A participant may at any time cancel a participation agreement, without cause, by submitting to the program administrator a notice to terminate the participation agreement.

(2) Except as provided in KRS 164A.350(7), a penalty [164A.345(2) or subsection (3) of this section, an administrative fee] shall be deducted from the amount refunded to the participant. The penalty shall be ten (10) percent of the investment earnings accrued to the account. The amount to be refunded pursuant to KRS 164A.350 [164A.345], less the penalty [administrative fee], shall be mailed or otherwise sent to the participant within sixty (60) days after receipt by the program administrator of notice to terminate the participation agreement.

[(3) Hardship or emergency. If a participant terminates or cancels the participation agreement under conditions of hardship or emergency, then the program administrator shall immediately refund money from the account in accordance with KRS 164A.345(1), without deduction of an administrative refund fee. The participant shall submit verifiable evidence of the hardship to the program administrator si-

~~multaneous with submission of the notice to terminate the participation agreement.]~~

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: May 15, 1998

FILED WITH LRC: July 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, August 21, 1998 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, August 14, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX # (502) 696-7293.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Richard F. Casey

(1) Type and number of entities affected: The regulation affects residents of any state who choose to participate in the Kentucky Higher Educational Savings Plan Trust. Qualifying participants or beneficiaries would be those having "Kentucky ties" and beneficiaries who have not attained the age of 15 as of the designation date. The extent of those who will be participants and beneficiaries is unknown. Although the number of accounts grows daily, there are currently over 2800 accounts established and all will potentially be affected by this amendment, but only if they elect to cancel the participation agreement.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The net impact is to replace, in accordance with statutory changes, any reference to an administrative fee and replace it with references to a penalty of 10% percent of the investment earnings accrued to the account deducted from the balance of an account refunded to the participant if the participant cancels the participation agreement. This regulation is also amended to delete any reference to canceling a participation agreement in the event of hardship or emergency.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent from the public comments received: The amendment is anticipated to have no impact on the cost of doing business of any entity.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing cost (note any effects upon competition) for the:

1. First year following implementation: The amendment affects no change in the compliance, reporting or paperwork requirements of any participant or beneficiary and is anticipated to have no effect upon competition.

2. Second and subsequent years: Same as #1 above.

(3) Effect on the promulgating body:

(a) Direct and indirect costs or savings:

1. First year: The penalty of 10% of the investment earnings accrued to the account deducted from the balance of an account refunded to the participant if the participant cancels the participation agreement is required under federal tax law as a precondition to provide federal tax advantages to program participants and beneficiaries. The intent of the penalty is to discourage cancellation of educational savings accounts and prevent inappropriate use of such savings plans for unintended tax advantages. The promulgating body would benefit from retention of the 10% percent penalty for administrative purposes, but the aggregate amount of penalties assessed is expected to be negligible.

2. Continuing costs or savings: Same as # 1. above

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This amendment does not affect any change in the reporting or paperwork of the promulgating body.

(4) Assessment of anticipated effect on state and local revenues: The promulgating body would benefit from retention of the ten (10%) percent penalty for administrative purposes, but the aggregate amount of penalties assessed is expected to be negligible.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds held in the trust are contributed and owned by the participant until utilization for the benefit of the beneficiary.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: There is no anticipated economic impact from the amendment. The amendment simply replaces references to an administrative fee with references to a penalty and removes references to cancellation of a participation agreement due to hardship or emergency. The forfeiture by the participant and the retention by the promulgating body of the 10% percent penalty for administrative purposes is expected to be negligible and therefore would have little or no economic impact.

(b) Kentucky: Same as (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This amendment merely conforms the administrative regulation to a statutory change. The Internal Revenue Code (26 USC sec. 529(b)(3)) requires imposition of "a more than de minimis penalty on any refund of earnings from the account." A penalty of 10% percent of the investment earnings accrued to the account is established to comply with the federal standard because of its similarity to the federal income tax penalty imposed upon early withdrawal from an Individual Retirement Account (IRA) and other similar tax advantaged investments.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no effect upon public health or the environment resulting from the amendment of this administrative regulation.

(b) State whether a detrimental effect on the environmental or public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: There is no known conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no known conflict.

(10) Any additional information of comments: None

(11) Tiering: Was tiering applied? No. The concept of tiering is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute, and consequently, does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

KENTUCKY HIGHER EDUCATION  
ASSISTANCE AUTHORITY  
Division of Student Services  
Kentucky Educational Savings Plan Trust  
(Amendment)

11 KAR 12:070. Benefits payable from the Kentucky Educational Savings Plan Trust Program fund.

RELATES TO: KRS 164A.310(8), 164A.330(5), 164A.335(1)

STATUTORY AUTHORITY: KRS 164A.325(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164A.300 through 164A.380 establish the Kentucky Educational Savings Plan Trust and prescribe the operation of the trust. 1998 Ky. Acts ch. 132 amended certain of the above statutes to conform operation of the trust to 26 USC 529 and to qualify the Kentucky Educational Savings Plan Trust as a "qualified state tuition program," under the Taxpayer Relief Act of 1997 (PL 105-34). KRS 164A.310(8), 164A.335(5) and 164A.335(1) establish the statutory framework for payment of benefits [to an institution] from the program fund. This administrative regulation is necessary to establish the maximum benefits payable in any academic period, the duration of the payments, the payment of benefits for a beneficiary residing off campus and the notice provisions in the event of a refund of the payments for nonuse or unused benefits from the program fund. [This amendment is necessary to clarify aspects of the disbursement process.]

Section 1. Distribution of Benefits. (1) Upon submission of a notice to use trust benefits, the participant shall specify the level of benefits to be paid. The participant may elect distribution of an allotment of the account balance, calculated by dividing the account balance by the number of academic periods in the beneficiary's program of study, or a higher amount, which shall not exceed the beneficiary's higher education costs for each academic period. The participant may adjust the level of benefits paid in any academic period by notifying the program administrator in writing.

(2) Distribution of benefits shall begin after receipt by the program administrator of a notice to use trust benefits and shall continue throughout the beneficiary's period of enrollment at an institution of higher education, or until the account balance has been exhausted, whichever occurs first.

(3) In the event a participant transfers ownership rights pursuant to KRS Chapter 385, Uniform Transfers to Minors Act, notwithstanding KRS 385.202(1), which mandates the transfer of custodial property to the minor upon attainment of age eighteen (18), the property shall be distributed for postsecondary educational purposes in accordance with the terms of the participation agreement during each academic period of the beneficiary's educational program.

[~~(4) Except as provided in Section 3 of this administrative regulation, each distribution of benefits shall be paid directly to the beneficiary's institution of higher education.~~]

Section 2. Beneficiary Residing Off Campus. If a beneficiary resides off campus, then, upon written request of the participant the program administrator may pay to the beneficiary, in addition to the amounts paid to the institution, an amount equal to the cost of room and board for an academic period as established by the institution for on-campus students. However, the amounts paid to the institution and the beneficiary shall not exceed the amount payable in any academic period from the program fund or exceed the higher education costs for that institution.

Section 3. Nonenrollment. If the trust does not receive a completed notice to use trust benefits or a notice to delay trust benefits by the first academic period of the academic year, beginning July 1 and ending June 30 of the following year, that begins after the beneficiary attains the age of eighteen (18), or if the beneficiary interrupts enrollment (other than normal intersemester vacation periods), and the trust does not receive a notice to delay benefits, then the program administrator shall refund the balance of payments and the earnings from the investments in the program fund remaining in the account in accordance with KRS 164A.350. A participant may delay distribution of benefits no more than a total of eight (8) academic periods. After delay of distribution of benefits for eight (8) academic periods, distributions

shall be made each academic period until the beneficiary graduates from an institution of higher education or the account balance has been exhausted, whichever occurs first, or the balance shall be refunded to the participant pursuant to KRS 164A.350.

Section 4. Unused Benefits. (1) During academic period. If a beneficiary's higher education costs are less than the benefits due for any academic period, then that portion of the unused benefits shall accumulate to the beneficiary's account. The unused benefits plus the beneficiary's entitlement in the program fund in any academic period not exceeding the higher education costs may be paid [to the institution] for the beneficiary in the next succeeding academic period.

(2) After graduation. If the beneficiary graduates from an institution of higher education, and a balance remains in the beneficiary's account, then the program administrator shall pay the balance of the payments and the earnings from the investments in the program fund remaining in the account to the participant pursuant to KRS 164A.350. [The program administrator shall make the payment from the program fund within sixty (60) days from the date of the beneficiary's graduation.] The refund shall be made unless the beneficiary plans to continue at a higher education institution and the participant submits a completed notice to delay benefits or notice to use trust benefits.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: May 15, 1998

FILED WITH LRC: July 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, August 21, 1998 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, August 14, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX # (502) 696-7293.

REGULATORY IMPACT ANALYSIS

Agency Contact: Richard F. Casey

(1) Type and number of entities affected: The regulation affects residents of any state who choose to participate in the Kentucky Higher Educational Savings Plan Trust. Qualifying participants or beneficiaries would be those having "Kentucky ties" and beneficiaries who have not attained the age of 15 as of the designation date. The extent of those who will be participants and beneficiaries is unknown. Although the number of accounts grows daily, there are currently over 2800 accounts established and all will eventually be affected by this amendment.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The proposed amendment to this regulation will impose no new costs or provide savings to participants. The net impact is to delete the requirement that each distribution of benefits be paid directly to the beneficiary's institution of higher education and the requirement that the program administrator pay the remaining balance in a beneficiary's account from the program fund within 60 days from the date of the beneficiary's graduation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent from the public comments received: The amendment is anticipated to have no impact on the cost of doing business of any entity.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing cost (note any effects upon

competition) for the:

1. First year following implementation: The amendment affects no change in the compliance, reporting or paperwork requirements of any participant or beneficiary and is anticipated to have no effect upon competition.

2. Second and subsequent years: Same as #1 above.

(3) Effect on the promulgating body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This amendment does not affect any change in the reporting or paperwork of the promulgating body, except that it eliminates the deadline requirement that the program administrator pay the remaining balance in a beneficiary's account from the program fund within 60 days from the date of the beneficiary's graduation.

(4) Assessment of anticipated effect on state and local revenues: None. Funds held in the trust are contributed and owned by the participant until utilization for the benefit of the beneficiary.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds held in the trust are contributed and owned by the participant until utilization for the benefit of the beneficiary.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: There is no anticipated economic impact from the amendment. The amendment simply removes the requirement that each distribution of benefits be paid directly to the beneficiary's institution of higher education and the requirement that the program administrator pay the remaining balance in the beneficiary's account from the program fund within 60 days from the beneficiary's graduation. The economic impact of the method of payment of benefits and elimination of the 60 day period for refunding the unused balance of an account is anticipated to be negligible upon anyone receiving the payments.

(b) Kentucky: Same as (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Neither the Internal Revenue Code nor state statutes require a particular method of disbursing the funds from the trust account and they do not require refund or the unused balance of an account within any particular timeframe. This amendment merely provides more latitude to the program administrator for efficient administration of the program.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no effect upon public health or the environment resulting from the amendment of this administrative regulation.

(b) State whether a detrimental effect on the environmental or public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: There is no known conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no known conflict.

(10) Any additional information of comments: None

(11) Tiering: Was tiering applied? No. The concept of tiering is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute, and consequently, does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated

as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

**PERSONNEL BOARD  
(Amendment)**

**101 KAR 1:325. Probationary periods.**

RELATES TO: KRS 18A.075(1), 18A.0751(1)(e), (4)(e), 18A.111  
STATUTORY AUTHORITY: KRS 18A.0751

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075(1) requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 requires the Personnel Board to promulgate comprehensive administrative regulations for the classified service governing probation. KRS 18A.111 establishes requirements governing initial and promotional probationary periods for classified service. This administrative regulation establishes the requirements relating to probationary periods.

Section 1. Initial Probationary Period. (1) The initial probationary period shall be computed from the effective date of appointment to the corresponding date in the sixth or final [12th] month, depending upon the length of initial probationary period, except as provided in KRS 18A.111.

(2) The following job classifications shall require an initial probationary period in excess of six (6) months:

TITLE CODE	JOB CLASSIFICATION	LENGTH OF INITIAL PROBATIONARY PERIOD
2001	Fish and Wildlife Law Enforcement [Conservation] Officer Trainee	12 months
2112	DES Duty Officer	12 months
2113	DES Duty Officer Senior	12 months
2201	Correctional Officer	8 months
2301	Arson Investigator	12 months
2305	Hazardous Devices Investigator	12 months
2306	Park Ranger	12 months
2308	Facility Security Sergeant	12 months
2309	Facility Security Lieutenant	12 months
2311	Facility Security Officer	12 months
2312	Park Ranger Captain	12 months
2322	Facility Security Officer II	12 months
2330	MVE Officer	12 months
2401	Police Communications Dispatcher	12 months
2403	Police Communications Dispatcher Senior	12 months
2404	Police Communications Dispatcher Coordinator	12 months
2405	Police Communications Dispatcher Supervisor	12 months
2408	Vehicle Inspector I [MVE Trainee]	12 months
2468	Communications Dispatcher	12 months
[2480]	Water Patrol Officer	12 months
2493	Mounted Security Office	12 months
2494	Mounted Security Sergeant	12 months
2495	Mounted Security Captain	12 months
2496	Mounted Security Officer Trainee	12 months
3254	Boiler Inspector Trainee	12 months
3416	Financial Institution Examiner Trainee	12 months
3550	Insurance Fraud Investigator	12 months
3551	Insurance Fraud Investigator Senior	12 months
3552	Insurance Fraud Investigator Chief	12 months
3553	Insurance Fraud Investigator Supervisor	12 months
[3604]	Alcoholic Beverage Enforcement Officer	12 months
3734	Assessment Conference Officer	12 months

# VOLUME 25, NUMBER 2 – AUGUST 1, 1998

4051	Questioned Documents Examiner	12 months
4056	Firearms and Toolmark Examiner	12 months
4061	Forensic Serologist	12 months
4080	Forensic Anthropologist	12 months
4610	Vocational Rehabilitation Specialist I	12 months
4611	Vocational Rehabilitation Specialist II	12 months
4612	Vocational Rehabilitation Specialist III	12 months
4613	Vocational Rehabilitation Specialist IV	12 months
4614	Vocational Rehabilitation Specialist V	12 months
4620	Vocational Rehabilitation Administrator I	12 months
4621	Vocational Rehabilitation Administrator II	12 months
5120	Student Development Trainee	12 months
5141	Vocational Rehabilitation Teacher Rank III	12 months
5142	Vocational Rehabilitation Teacher Rank II	12 months
5143	Vocational Rehabilitation Teacher Rank I	12 months
[6248	Residential Facility Superintendent I	12 months
6250	Residential Facility Superintendent III	12 months
6252	Residential Facility Superintendent II	12 months
6253	Disability Determiner	12 months
6290	Administrative Hearing Officer	12 months
7213	Forestry District Equipment Supervisor	12 months
7215	Nursery Foreman	12 months
7217	Nursery Superintendent	12 months
7221	Forester	12 months
7222	Forester Senior	12 months
7224	Forester Chief	12 months
7226	Forester District	12 months
7228	Forester Regional	12 months
7231	Rural Fire Suppression Technical Advisor	12 months
7232	Forestry Program Specialist	12 months
7233	Forestry Program Coordinator	12 months
7235	Forestry Program Manager	12 months
7250	Forest Ranger Technician	12 months
7251	Forest Ranger Technician Senior	12 months
7252	Forest Ranger Technician Chief	12 months
7253	Forest Ranger Technician District	12 months
7255	Forest Resource Advisor	12 months
7257	Forestry Fire Management Program Coordinator	12 months
7259	Forestry Resource Education Program Coordinator	12 months
9175	Public Accounts Auditor Trainee	12 months
9859	Environmental Administrative Hearing Officer	12 months
9885	Investigator	12 months

5304	Consultant-I Exceptional Children Consultant-II	12 months
5305	Exceptional Children Program Manager-I	12 months
5306	Exceptional Children Program Manager-II	12 months
5309	Education Academic Program Consultant-I	12 months
5310	Education Academic Program Consultant-II	12 months
5311	Education Academic Program Manager-I	12 months
5312	Education Academic Program Manager-II	12 months
5313	Education Administration Program Consultant-I	12 months
5314	Education Administration Program Consultant-II	12 months
5315	Education Administration Program Manager-I	12 months
5316	Education Administration Program Manager-II	12 months
5321	Education Facilities Program Consultant	12 months
5323	Education Facilities Program Manager	12 months
5324	Education Instructional Services Advisor	12 months
5325	School Accreditation Evaluator	12 months
5327	School Accreditation Evaluation Manager	12 months
5329	School Food Services Program Consultant	12 months
5330	School Food Services Program Coordinator	12 months
5331	School Food Services Program Manager	12 months
5337	Education Financial Analyst	12 months
5341	Education Health/P.E. Program Consultant-I	12 months
5342	Education Health/P.E. Program Consultant-II	12 months
5343	Education Reading Program Consultant-I	12 months
5344	Education Reading Program Consultant-II	12 months
5345	Education Social Studies Program Consultant-I	12 months
5346	Education Social Studies Program Consultant-II	12 months
5347	Education Science Program Consultant-I	12 months
5348	Education Science Program Consultant-II	12 months
5349	Education Language Arts Program Consultant-I	12 months
5350	Education Language Arts Program Consultant-II	12 months
5351	Education Math Program Consultant-I	12 months
5352	Education Math Program Consultant-II	12 months
5353	Education Primary Program Consultant-I	12 months
5354	Education Primary Program Consultant-II	12 months
5355	Education Vocational Program Consultant-I	12 months
5356	Education Vocational Program Consultant-II	12 months

(3) If the length of the initial probationary period for a job classification is changed, an employee serving an initial probationary period on the effective date of the change shall serve the shorter of the initial probationary periods. When the employee is appointed, the employee's appointing authority shall advise the employee of the period of his initial probation.

(4) If an applicant is appointed to a position from a competitive register, the appointment shall be considered an initial appointment.

[(5) Effective July 1, 1991, the following job classifications in the Department of Education shall require an initial probationary period in excess of six (6) months:

TITLE CODE	JOB CLASSIFICATION	LENGTH OF INITIAL PROBATIONARY PERIOD
---------------	-----------------------	--

5303	Exceptional Children	12 months
------	----------------------	-----------

Section 2. Promotional Probationary Period. (1) An employee who



satisfactorily completes the promotional probationary period shall be granted status in the position to which he has been promoted. Unless an employee receives notice prior to the end of his promotional probationary period that he has failed to satisfactorily complete the promotional probationary period and that he is being reverted, the employee shall be deemed to have served satisfactorily and shall acquire status in the position to which he has been promoted.

(2) An employee who fails to satisfactorily complete a promotional probationary period shall be reverted to his former position or to a position in the same job classification as his former position. If an employee fails to satisfactorily complete a promotional probationary period, he shall be notified in writing at least ten (10) working days prior to the effective date of his reversion. The notification shall advise the employee of the effective date of reversion. When the employee is notified, a copy of the notice of reversion shall be forwarded to the Secretary of Personnel on the same date notice is delivered to the employee.

(3) The promotional probationary period shall be computed from the effective date of promotion to the corresponding date in the sixth month following promotion, except as provided in KRS 18A.111.

Section 3. Probationary Period Upon Reinstatement. (1) An employee who is reinstated, except an employee ordered reinstated pursuant to KRS 18A.111(3), to a position in the classified service no later than twelve (12) months after the beginning of a break in the classified service shall be reinstated with status.

(2) An employee who is reinstated to the classified service more than twelve (12) months after a break in service, except an employee ordered reinstated pursuant to KRS 18A.111(3), shall serve an initial probationary period.

MICHELLE M. KELLER, Chairperson

ROBERT A. BOWMAN, General Counsel

APPROVED BY AGENCY: July 10, 1998

FILED WITH LRC: July 14, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 24, 1998, at 9 a.m., at 5 Fountain Place, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 17, 1998, five working days prior to the scheduled hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: R. Hanson Williams, Executive Director, Commonwealth of Kentucky, Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601, Telephone: (502) 564-7830, Fax: (502) 564-1693.

#### REGULATORY IMPACT ANALYSIS

Contact Person: R. Hanson Williams

(1) Type and number of entities affected: This regulation affects all state agencies having probationary periods in excess of 6 months. The proposed amendment increases the probationary period for the classifications of Correctional Officer, Arson Investigator, Hazardous Devices Investigator, MVE Officer, Communications Dispatcher, Insurance Fraud Investigator, Insurance Fraud Investigator Senior, Insurance Fraud Investigator Chief, Insurance Fraud Investigator Supervisor, Questioned Documents Examiner, Firearms and Toolmark Examiner, Forensic Serologist, Forensic Anthropologist, Vocational Rehabilitation Specialist I, Vocational Rehabilitation Specialist II, Vocational Rehabilitation Specialist III, Vocational Rehabilitation Specialist IV, Vocational Rehabilitation Specialist V, Vocational Rehabilitation Administrator I, Vocational Rehabilitation Administrator II, Disability Determiner, Administrative Hearing Officer, and Investigator.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No public comments received.

Cost of living and employment not affected.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received. No public comments received. Cost of doing business not affected.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Compliance does not result in increased reporting, paperwork or cost.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The source of revenue is the respective agency's budget for its employees.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments received. No economic impact.

(b) Kentucky: No public comments received. No economic impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative is to retain the 6 month probationary period which would not provide an adequate period of time to train and evaluate employees before achieving status.

(8) Assessment of expected benefits: By increasing the initial probationary period for these classifications, the affected agencies will be able to adequately train and evaluate employees before achieving status thus allowing the most qualified individuals to be placed into these classifications.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky. None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No detrimental effect on environment and public health will result if not implemented.

(c) If detrimental effect would result, explain detrimental effect: No detrimental effect will result.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: This administrative regulation does not conflict, overlap or duplicate any statute, administrative regulation or government policy.

(a) Necessity of proposed regulation if in conflict: There is no conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no conflict.

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not applied. This regulation must apply equally to all classified employees in all state agencies with classified employees.

#### FINANCE AND ADMINISTRATION CABINET Office of Financial Management and Economic Analysis (Amendment)

200 KAR 15:010. Formula for allocation of private activity bonds.

RELATES TO: KRS 103.200(1)(k), (l), (m), (n), (2), 103.2101, 103.286

STATUTORY AUTHORITY: KRS 103.286(3), 26 USC sec. 146  
NECESSITY, FUNCTION, AND CONFORMITY: KRS 103.286(3) provides that the Secretary of the Finance and Administration Cabinet shall promulgate administrative regulations to provide for the allocation of the state ceiling for the issuance of private activity bonds. This administrative regulation establishes the formula for that allocation.

Section 1. Definitions. For the purposes of this administrative regulation:

- (1) "Affected bonds" means "private activity bonds" as defined by 26 USC sec. 146, excluding any obligations not subject to the state ceiling under the Code;
- (2) "Bonds", see KRS 103.200(2);
- (3) "Committee" means the Kentucky Private Activity Bond Allocation Committee;
- (4) "Issuer" or "issuing authority" means the public or authorized governmental body which issues the bonds;
- (5) "Issued" means delivered and paid for;
- (6) "Local issuer pool" means the portion of the state ceiling from which allocations for local projects are made to issuers of affected bonds issued on behalf or for the benefit of an entity which is not a state agency;
- (7) "Local project" means a project for which bonds are issued on behalf or for the benefit of an entity which is not a state agency;
- (8) "Single issuer pool" means the portion of the state ceiling from which allocations are made to any issuer;
- (9) "Staff" means the Office of Financial Management and Economic Analysis of the Finance and Administration Cabinet;
- (10) "State ceiling" means the cap imposed by 26 USC sec. 146 on private activity bonds issued within the Commonwealth of Kentucky;
- (11) "State issuer pool" means the portion of the state ceiling from which allocations for state projects are made to issuers of affected bonds issued on behalf or for the benefit of a state agency;
- (12) "State project" means a project for which bonds are issued on behalf or for the benefit of a state agency; and
- (13) "Year" shall mean calendar year.

Section 2. Allocation of State Ceiling for Private Activity Bonds. On January 1st of each year, the state ceiling for private activity bonds shall be divided into two (2) separate pools:

- (1) Sixty (60) percent of the state ceiling shall be reserved in a state [local] issuer pool until July [October] 1st. On July [October] 1st, the remainder of any unallocated portion of the state ceiling shall revert to the [a] single issuer pool.
- (2) Forty (40) percent of the state ceiling shall be reserved for a local [state] issuer pool until July 1st. On July 1st, the remainder of any unallocated portion of the state ceiling shall revert to the single issuer pool.

Section 3. Allocations For Local Projects. Prior to July [October] 1 the committee shall not allocate a portion of the state ceiling for any project in an aggregate principal amount greater than ten (10) percent of the amount of the local issuer pool.

Section 4. Evaluation of Local Projects. Local projects seeking allocation from the state ceiling will be ranked based on evaluation of the factors listed, and allocated according to the rankings: [prior to October 1 shall be evaluated by the committee using the following criteria:]

- (1) Creation of new jobs, as well as preservation of existing jobs, by the project;
- (2) Average salary per employee proposed for the project;
- (3) Capital investment in Kentucky being made as a result of the project;
- (4) Unemployment rate in the county of the project;
- (5) State economic development incentives awarded to the company, if any;
- (6) Previous private activity bond cap allocated to the company.

Section 5. Allocation of Single Issuer Pool. Allocations from the single issuer pool shall be made to local projects which have filed a notice of intent to issue but which did not receive an allocation from the local issuer pool, or did not receive the total allocation requested from the local issuer pool, in the order in which they were ranked pursuant to Section 4 of this administrative regulation. No local project shall be allocated a total amount which is greater than ten (10) percent of the local issuer pool. Any funds remaining after allocation to local projects as stated in this administrative regulation, shall be allocated by the committee on a first-come first-serve basis.

Section 6. Committee Meetings. The committee shall meet as necessary [at least quarterly] to allocate the state ceiling. Special meetings may be held on the call of the committee chairman.

Section 7. An issuer shall obtain a confirmation authorizing the issuance of affected bonds by filing with the committee a written notice of intention to issue bond ("notice of intent" form). [6-Obtaining Confirmations in Advance-notice of Intent. A confirmation authorizing the issuance of affected bonds shall be obtained by the issuer filing with the committee a written notice of intention to issue bonds ("notice of intent" form).] The committee shall issue a confirmation ("Confirmation of Allocation of State Ceiling" form) allocating to the issuer a portion of the state ceiling [equal to the amount of the bonds proposed to be issued]. Affected bonds shall not be issued by any issuer prior to receiving confirmation by the committee of an allocation under the state ceiling. Confirmations shall be dated and numbered in the order issued.

Section 8. [7-] Notice of Issuance. Local Projects. [Original] Confirmation Effective for Ninety (90) Days. A confirmation shall expire ninety (90) calendar days from the date of issuance by the committee, or December 15, whichever is earlier. The issuer shall deliver to the committee a notice that the affected bonds have been issued ("Notice of Issuance" form). The notice of issuance may be sent by any means but [it shall be received by] the committee shall receive it by the close of business on the 90th day after the confirmation. If the period ends on a Saturday, Sunday, or other day upon which state offices are closed for business, the notice period shall be extended to the next business day.

[Section 8. Renewal of Confirmation Period. (1) If the bonds are not issued within the ninety (90) day confirmation period, the issuer may seek a renewal of confirmation for all or any part of the project described in the original notice of intent;

- (2) The issuer may seek renewal by filing a new notice of intent;
- (3) The issuer shall wait a period of thirty (30) days after expiration of the original confirmation period before filing the new notice of intent;
- (4) The committee shall review the new notice of intent and may grant a renewal confirmation which shall be valid for a period of thirty (30) days.]

Section 9. Notice of Issuance. State Projects. Confirmation effective for 180 days. A confirmation shall expire 180 calendar days from the date of issuance by the committee, or December 15, whichever is earlier. The issuer shall deliver to the committee a notice that the affected bonds have been issued ("Notice of Issuance" form). The notice of issuance may be sent by any means but the committee shall receive it by the close of business on the 180th day after the confirmation. If the period ends on a Saturday, Sunday, or other day upon which state offices are closed for business, the notice period shall be extended to the next business day. [Supplementary Confirmation for Excess Amounts Required. If the amount of affected bonds proposed to be issued is insufficient to pay the costs of the proposed project, an issuer may file with the committee a supplementary notice of intention to issue additional bonds. The committee shall confirm the supplementary notice of intention to issue bonds by a supplementary confirmation. The supplementary confirmation shall expire on the date of the confirmation that it supplements.]

Section 10. Issuance of Bonds in Lesser Amounts than Confirmation. Eighty-five (85) Percent Requirement. A confirmation of affected bonds shall be effective if issued in amounts less than the confirmed amount; if [provided, that] the face amount of the issued bonds is not less than eighty-five (85) percent of the original confirmed amount. The issuer shall notify the committee if the bonds issued are within the eighty-five (85) percent limit and the unused part of the allocation shall revert to the issuer pool from which the allocation was made, or to a single issuer pool after July 1 of any year.

Section 11. Carry Forward Allocations (1) In any year, the committee shall allocate any remaining state ceiling as carry forward allocations if the aggregate amount of private activity bonds issued during the year is less than the state ceiling on December 15th. An issuer may, in order to receive a carry forward allocation, file with the com-

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

~~mittee by December 15th: [If the aggregate amount of private activity bonds issued during the year does not exceed the state ceiling, an issuer may, in order to carry forward to the next year, file with the committee by December 31st]~~

- (a) A "notice of intent" ("Notice of Intent" form); and
  - (b) A "carry forward election of unused private activity bond volume cap" (U.S. Treasury Department Form 8328).
- (2) The carry forward of any unallocated portion of the state ceiling may be for any purpose authorized by 26 USC sec. 146(f).
- (3) The committee shall issue a confirmation of the notice and election to carry forward ("Confirmation of Carry Forward Allocation of State Ceiling" form).
- (4) The committee may consider, but shall not be required to grant, a carry forward notice or election filed after December 15th [31st].

Section 12. The committee shall not confirm a notice of intent to issue bonds after the aggregate amount of bond confirmations, including carry forwards, have reached the state ceiling for that year.

Section 13. Form and Manner. (1) The notice and confirmation forms required to be filed with and issued by the committee are incorporated by reference in Section 15 of this administrative regulation.

(2) An issuer of a local project shall not:

(a) File a notice of intent to issue bonds unless the issuance will be made within the ninety (90) day confirmation period established in Section 8 [7] of this administrative regulation;

(b) Seek an allocation of the state ceiling in excess of the amount necessary to finance all costs of a project.

(3) An issuer of a state project shall not:

(a) File a notice of intent to issue bonds unless the issuance will be made within the 180 day confirmation period;

(b) Seek allocation of the state ceiling in excess of the amount necessary to finance all costs of a program.

Section 14. Delegation of Functions. The committee shall review and allocate all requests for state ceiling. The committee shall not delegate authority to make allocations of the state ceiling to staff except in cases of surplus or carry forward allocations. Any delegation of authority and the limit of that authority shall be recorded verbatim in the minutes of the committee meeting at which the delegation is made.

Section 15. Incorporation by Reference. (1) The following forms are incorporated by reference:

(a) "Notice of Intent" application (~~March 1998~~ [July 1996]);

(b) "Confirmation of Allocation of State Ceiling" (~~March 1998~~ [September 1995]);

(c) "Confirmation of Carry-forward Allocation of State Ceiling" (~~March 1998~~ [September 1995]);

(d) "Notice of Issuance" (~~March 1998~~ [September 1995]); and

(e) "U.S. Treasury Department Form 8328".

(2) Copies of the forms may be inspected, copied or obtained at the Office of Financial Management and Economic Analysis, 261 Capitol Annex, Frankfort, Kentucky 40601, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

JOHN P. MCCARTY, Secretary

KAREN POWELL, Attorney

APPROVED BY AGENCY: June 17, 1998

FILED WITH LRC: July 7, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1998 at 10 a.m. at the Office of Financial Management and Economic Analysis, Capitol Annex, Room 261, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 18, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hear-

ing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kimberly Link, Financial Analyst, Office of Financial Management and Economic Analysis, Room 261, Capitol Annex, Frankfort, Kentucky 40601, (502) 564-2924, Fax (502) 564-7416.

### REGULATORY IMPACT ANALYSIS

Contact Person: Kimberly Link

(1) Type and number of entities affected: The Kentucky Housing Corporation, the Kentucky Higher Education Student Loan Corporation, the Kentucky Infrastructure Authority, the State Property and Buildings Commission and local bond issuing entities in all 120 Kentucky counties.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no direct or indirect costs or savings on the cost of living and employment in Kentucky, in the aggregate, as a result of this administrative regulation. However, there may be a redistribution of the savings realized by the ability to issue private purpose bonds on a tax-exempt basis within the state. It would be impossible to predict the redistribution.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no direct or indirect costs or savings on the cost of doing business in Kentucky, in the aggregate, as a result of this administrative regulation. However, there may be a redistribution of the savings realized by the ability to issue private purpose bonds on a tax-exempt basis within the state. It would be impossible to predict the redistribution.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any affects upon competition) for the:

1. First year following implementation: Pursuant to KRS 103.286 as amended by 98 RS HB 382, 60% of the state ceiling on private activity bonds shall be reserved for state bond-issuance authorities until July 1st. 40% of the state ceiling on private activity bonds shall be reserved for a local issuer pool until July 1st. After July 1st, allocations from the single issuer pool shall be made to local projects which have filed a notice of intent to issue but which have not received an allocation from the local issuer pool, or did not receive the total allocation requested from the local issuer pool, in the order in which they were evaluated. No local project shall be allocated a total amount which is greater than 10% percent of the local issuer pool. Any funds remaining after allocation to local projects as stated above, shall be allocated by the committee on a first-come first-serve basis. In addition, confirmation for state projects 180 days from the date of issuance by the committee or December 15, whichever is earlier. A state issuer may not file a notice of intent to issue bonds unless the issuance will be made within the 180 day confirmation period or seek allocation of the state ceiling in excess of the amount necessary to finance all costs of a program.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: There are no direct or indirect costs or savings to the promulgating administrative body.

1. First year: There are no direct or indirect costs or savings to the promulgating administrative body.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be no change in reporting and paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: More volume cap will be available to the Kentucky Housing Corporation and Kentucky Higher Education Student Loan Corporation thus providing low interest loans to the citizens of Kentucky.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No source of revenue to be used for implementation and enforcement of this administrative

regulation is necessary.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from the administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: Statewide. The 10% limitation imposed on local projects could possibly result in more job creation because more projects can receive private activity bond cap. The 60% state set aside will provide the Kentucky Housing Corporation with continuing and reliable mortgage revenue bond resources needed to provide for affordable low and moderate income housing for Kentucky residents, and will provide the Kentucky Higher Education Student Loan Corporation with continuing and reliable student loan revenue bond resources needed to provide additional student loans for Kentucky students.

(b) Kentucky: The 10% limitation imposed on local projects could possibly result in more job creation because more projects will receive private activity bond cap. The 60% state set aside will provide the Kentucky Housing Corporation with continuing and reliable mortgage revenue bond resources needed to provide for affordable low and moderate income housing for Kentucky residents, and will provide the Kentucky Higher Education Student Loan Corporation with continuing and reliable student loan revenue bond resources needed to provide additional student loans for Kentucky students.

(7) Assessment of alternative methods; reasons why alternatives were rejected: There were no alternative methods considered. This amendment to the administrative regulation is necessary in order to be in compliance with 98 RS HB 382.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There are no effects on the public health or environmental welfare in Kentucky as a result of this administrative regulation.

(b) State whether a detrimental effect on environment and public health would result if not implemented: There would not be a detrimental effect on the environment or public health if this administrative regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: There are no known statutes, administrative regulations or government policies which overlap or conflict with this administrative regulation.

(a) Necessity of proposed regulation if in conflict: Does not apply.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Does not apply.

(10) Additional information or comments: None

(11) TIERING: Is tiering applied? Yes. The administrative regulation is tiered in that established criteria are used to evaluate local projects but no criteria is established to evaluate state projects. Also, there is a 10% limitation on local projects with no such limitation on state programs. This administrative regulation also establishes a 60% set aside of the state ceiling for state issuers and a 40% set aside of the state ceiling for local issuers.

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Examiners of Psychology  
(Amendment)**

**201 KAR 26:121. Scope of practice.**

RELATES TO: KRS 319.032(1)(b)

STATUTORY AUTHORITY: KRS 319.032(1)(b)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(b) requires the board to promulgate administrative regulations establishing and defining the scope of practice within each area of specialty within the field of psychology. This administrative regulation establishes the required specialty areas and the scope of practice. [To fulfill the requirement of establishing the scope of practice of psychologists.]

Section 1. A licensed psychologist, certified psychologist with

autonomous functioning, certified psychologist, or psychological associate shall not practice or present himself outside the area of competency specified in the application and the area approved by the board based upon examination and review of qualifications, training and experience.

Section 2. (1) A completed application for a change in a licensed or certified area(s) of competency shall be submitted to the board.

(2) The board shall review the applicant's credentials, qualifications and experience.

(3) Upon approval of the completed application by the board, the applicant shall take an examination in the requested area(s).

(4) The applicant shall submit the appropriate fee for the examination.

Section 3. Change from Certified to Licensed Psychologist. (1) If a person has been certified and later completes, to become licensed as a psychologist, a new and complete application for licensure as a psychologist with area of competency requested shall be submitted with an approved application fee.

(2) The board shall accept the applicant's previous examination results for the objective (EPPP) examination if the original test score satisfies the licensure requirement as to criterion level.

(3) The oral portions of the examination shall be successfully completed by the applicant.

Section 4. Scope of Practice. (1) A licensed psychologist who holds the health service provider designation, a certified psychologist with autonomous functioning, a certified psychologist, and a psychological associate works in various health care settings including hospitals, clinics, counseling centers, schools, community agencies, mental health centers, correctional facilities, the judicial system, and independent practice) and provide one (1) or more of the following direct or supportive services:

(a) Diagnosis of emotional and mental and nervous disorders, including substance abuse and adjustment problems of individuals and groups through the use of psychological testing and other techniques;

(b) Evaluation or assessment of the functioning of individuals, groups, and organizations;

(c) Treatment and amelioration of emotional and mental and nervous disorders, substance abuse, and adjustment problems of individuals and groups;

(d) Interventions and preventive techniques that facilitate the functioning of individuals, groups, and organizations;

(e) Consultation services;

(f) Program planning and development services;

(g) Evaluation of psychological and human service programs; and

(h) Supervision of health service delivery as described in 201 KAR 26:171.

(2) A licensed psychologist who holds the health service provider designation, a certified psychologist with autonomous functioning, a certified psychologist, or a psychological associate is expected to restrict their practice to the delivery of specific services for which he is competent based on professional education, training, and experience.

Section 5. Clinical Psychology. (1) Clinical psychological service refers to the application of principles, methods, and procedures for understanding, predicting, preventing, and alleviating intellectual, emotional, biological, psychological, social and behavioral maladjustment, disability and distress, applied to a wide range of client populations.

(2) A clinical psychologist diagnoses and assesses the following: (a) The nature and causes of subjective distress and psychopathology;

(b) Personal, social, and work dysfunctions;

(c) The psychological and emotional factors involved in, and consequent to, physical disease and disability;

(d) Neuropsychological functioning;

(e) Substance use and abuse;

(f) Sexual dysfunction; and

(g) Physical and cognitive decline.

(3) Procedures may include:

(a) Interviewing;

(b) Behavioral assessment; and

(c) Constructing, validating, administering and interpreting tests of intellectual and cognitive abilities, aptitudes, emotions, motivations, personality characteristics, the psychological aspects of physical illness, accident, injury or disability, and other aspects of human experience and behavior.

(4) A clinical psychologist intervenes at the primary, secondary, and tertiary levels, including interventions directed at preventing, treating and correcting the psychopathology, emotional conflicts, personality disturbances, and skills deficits underlying distress and dysfunction. Interventions may reflect a variety of theoretical orientations, techniques, and modalities. These may include, psychotherapy, psychoanalysis, behavior therapy, cognitive therapy, interpersonal therapy, marital and family therapy, group therapy, social learning approaches, biofeedback, hypnosis, cognitive retraining and rehabilitation, and environmental consultation and design. In addition to the treatment of diagnosed mental disorders, clinical psychology also includes interventions to promote health and adjustment. Clinical psychological intervention promotes the full range of individual, interpersonal, and social adaptation and health.

(5) Within his area of expertise, a clinical psychologist consults with a wide range of other professions and individuals in many modes of consultation. The breadth of consultation by a clinical psychologist is commensurate with the breadth of problems, populations, and procedures with which clinical psychology concerns itself.

(6) A clinical psychologist supervises a wide variety of health professionals and health care professionals in training.

(7) Clinical Psychology. [Clinical Psychology: (1) Clinical psychological services refers to description, evaluation, interpretation and modification of human behavior by the application psychological of principles, methods, and procedures for the purpose of preventing, eliminating, or reducing symptomatic, maladaptive or undesired behavior and of enhancing interpersonal relationships, work and life adjustment, personal effectiveness, behavioral health and mental health.

(2) Direct services are provided in a variety of health and human service settings including: psychiatric hospitals, general medical hospitals, community mental health centers, clinics, schools, residential treatment centers, correctional facilities, the judicial system, and independent practice, [and private offices.

(3) Direct and supportive services are provided throughout the entire range of social, organizational, and academic institutions and agencies:

(4) Clinical psychological services include:

(a) Psychological testing and the evaluation or assessment of personal characteristics such as:

1. Intelligence;
2. Personality;
3. Abilities;
4. Interests;
5. Aptitudes; and
6. Neuropsychological functioning;

(b) Psychotherapy;

(c) Counseling;

(d) Psychoanalysis;

(e) Hypnosis;

(f) Biofeedback and behavior analysis and therapy;

(g) Diagnosis and treatment of mental and emotional disorder or disability;

(h) Alcoholism and substance abuse disorders of habit or conduct;

(i) The psychological aspects of:

1. Physical illness;
2. Accident;
3. Injury; or
4. Disability;

(j) Psychoeducational evaluation, therapy, remediation, and consultation;

(k) Assessment directed toward diagnosing the nature and causes, and predicting the effects, of subjective distress; of personal, social and work dysfunction; and of the psychological and emotional factors involved in and consequent to, physical disease and disability. Procedures may include: interviewing, and administering and inter-

preting tests of intellectual abilities, attitudes, emotions, motivations, personality characteristics, psychoneurological status, and other aspects of human experience and behavior relevant to the disturbance;

(l) Interventions directed at identifying and correcting the emotional conflicts, personality disturbances, and skill deficits underlying a person's distress or dysfunction. Interventions may reflect a variety of theoretical orientations, techniques, and modalities. These may include: psychotherapy, psychoanalysis, behavior therapy, marital and family therapy, group psychotherapy, hypnotherapy, social learning approaches, biofeedback techniques, and environmental consultation and design;

(m) Professional consultation in relation to assessment and intervention;

(n) Program development services in the areas of assessment, intervention, and consultation; and

(o) Supervision of clinical psychological services.]

Section 6. [5:] Scope of Practice - Counseling Psychology. (1) A counseling psychologist facilitates personal and interpersonal functioning across the life span with a focus on emotional, social, vocational, educational, health-related, developmental and organizational concerns. Counseling psychology focuses on typical, as well as atypical or dysfunctional development as it applies to human experience from individual, family, group, systems, and organizational perspectives. Through the integration of theory, research, and practice, and with the awareness and skills to work with diverse populations, counseling psychology encompasses a broad range of practices that help people improve their well-being, alleviate distress and maladjustment, resolve crises, and increase their ability to live more highly functioning lives.

(2) The procedures and techniques used by a counseling psychologist include:

(a) Individual, family, group and systemic counseling and psychotherapeutic interventions;

(b) Crisis intervention, disaster and trauma management;

(c) Psychodiagnostic and assessment techniques;

(d) Psychoeducational/preventive programming;

(e) Organizational consulting;

(f) Program and treatment evaluation;

(g) Training;

(h) Clinical supervision;

(i) Test construction, validation, administration, and interpretation; and

(j) Methodologies for quantitative and qualitative inquiry.

(3) Intervention procedures have as their focus change in clinical cognitions, feelings and behavior and may be preventive, skill enhancing or remedial. Intervention procedures may range from short term or time-specified to longer term approaches. [Counseling psychology refers to services provided by counseling psychologists that apply principles, methods, and procedures for facilitating effective functioning during the life-span developmental process.

(2) In providing these services, counseling psychologists shall approach practice with a significant emphasis on positive aspects of growth and adjustment and with a developmental orientation.

(3) These services are intended to help persons acquire or alter personal-social skills, improve adaptability to changing life demands, enhance environmental coping skills, and develop a variety of problem-solving and decision-making capabilities.]

(4) Counseling psychology services are used by individuals, couples, and families of all age groups to cope with problems connected with education, career choice, work, sex, marriage, family, other social relations, health, aging, and handicaps of a physical or social nature.

(5) Counseling psychology [The] services are offered in a variety of settings such [organizations] as educational, rehabilitation, and health institutions and [in a variety of] other public and private agencies. These include:

(a) Counseling centers;

(b) Psychiatric hospitals;

(c) General medical hospitals;

(d) Mental health centers;

(e) Clinics;

(f) Schools;

(g) Correctional facilities;

(h) Residential treatment centers;

- (i) The judicial system; and
- (j) Independent practice.
- [(6) Counseling psychological services include the following:
- (a) Assessment, evaluation, and diagnosis;
- (b) Interventions with individuals and groups;
- (c) Professional consultation in relation to assessment and intervention;
- (d) Program development services in the areas of assessment, intervention, and consultation;
- (e) Supervision of counseling psychological services; and
- (f) Evaluation of all counseling psychological services.]

Section 7. [6:] Scope of Practice - School Psychology. (1) A school psychologist is concerned with the practice of psychology with children, youth, and families; learners of all ages; and the schooling process. A school psychologist provides a range of psychological diagnosis and assessment, intervention, prevention, health promotion, and program development and evaluation services with a special focus on the developmental processes of children and youth within the contexts of schools, families, and other systems. In his work, a school psychologist facilitates healthy growth and development through the promotion of competent and effective educational, familial, and organizational systems. A school psychologist serves diverse populations of clients in various settings, including: public and private schools, educational agencies, health care facilities, youth correctional agencies, social service departments, special diagnostic centers, child and family guidance centers, community agencies, hospitals, the judicial system, and independent practice.

(2) School psychological assessment activities are designed to evaluate the functioning of children, youth, and adults using technically adequate and valid procedures. Procedures include construction, validation, administration, and interpretation of screening, psychological and educational tests of intellectual functioning, cognitive development, affective behavior and neuropsychological status, interviews, observation, and behavioral evaluation.

(3) School psychological interventions are designed to facilitate the functioning of individuals or groups, including:

- (a) Recommending, planning, and evaluating education and mental health services;
- (b) Psychoeducational therapy;
- (c) Counseling;
- (d) Affective educational programs;
- (e) Prevention programming;
- (f) Skill development training programs;
- (g) Facilitating effective educational and mental health functions of school and community agency personnel, parents, and other care-givers;

(h) Planning, training, coordination, and evaluation of programs; consultation and collaboration with school and community agency personnel or parents concerning specific problems of children and youth and the professional problems of staff;

(i) Enhancing integration of services across system interfaces; and

(j) Program development services to individual schools, to school administrative systems, and to community agencies. [School psychology services refers to one (1) or more of the following services offered to clients involved in educational settings, from preschool through higher education, for the protection and promotion of mental health and the facilitation of learning. School psychological services include:

(1) Psychological and psychoeducational evaluation and assessment of the school functioning of children and young persons. Procedures include screening, psychological and educational tests of intellectual functioning, cognitive development, affective behavior, and neuropsychological status, interviews, observation, and behavioral evaluations.

(2) Interventions to facilitate the functioning of individuals or groups, including: recommending, planning, and evaluating special education services; psychoeducational therapy; counseling; affective educational programs; and training programs to improve coping skills.

(3) Interventions to facilitate the educational services and child care functions of school personnel, parents, and community agencies.

(4) Consultation and collaboration with school personnel or par-

ents concerning specific school-related problems of students and the professional problems of staff.

(5) Program development services to individual schools, to school administrative systems, and to community agencies;

(6) Supervision of school psychological services.]

DONALD E. RALPH, Ph.D., Chairman  
MARK BRENGELMAN, Legal Counsel

APPROVED BY AGENCY: July 10, 1998

FILED WITH LRC: July 15, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1998 at 9:30 a.m. at the offices of the Division of Occupations and Professions located at Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 18, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

#### REGULATORY IMPACT ANALYSIS

Contact Person: David L. Nicholas

(1) Type and number of entities affected: All persons practicing psychology in Kentucky.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no costs associated with this regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: There are no costs associated with this regulation.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition for the:

1. First year following implementation: Any psychologist wishing to change his area of specialty will be required to file such a request with the board.

2. Second and subsequent years: Any psychologist wishing to change his area of specialty will be required to file such a request with the board.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None.

(b) Reporting and paperwork requirements: An application for a change in specialty area will have to be reviewed and processed.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Trust and agency funds ordinarily used by the board.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The public will be protected by having psychologists practice within their documented specialty area.

(8) Assessment of expected benefits:



(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The credentialing of psychologists provides protection to the public.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: It would be more difficult for the board to provide the necessary protection to the public without this regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a or continue to hold a credential. Provisions contained in these administrative regulations provide avenues by which the applicant may appeal actions of the board.

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Examiners of Psychology  
(Amendment)**

**201 KAR 26:125. Health service provider designation.**

RELATES TO: KRS 319.050(7)

STATUTORY AUTHORITY: KRS 319.032(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.050(7) provides that the designation of "health service provider" shall be granted for those licensed psychologists who deliver or supervise direct health-care services. This administrative regulation clarifies the requirements for the granting of that designation. [Certain terms are used in the statute regulating the requirements for health service provider designation. This administrative regulation defines those terms:

Section 1. For purposes of this administrative regulation, the designation "health service provider" shall refer to a licensed psychologist [those persons] defined in KRS 319.050(7) who delivers direct health care services or who supervises a certified psychologist, temporary licensed psychologist, psychological associate, student, intern, or resident pursuing a course of graduate study in psychology, or an applicant [or the supervision of certified psychologists, psychological associates, or applicants] for licensure or certification who is [are] delivering direct health care services.

Section 2. Direct health care services include the delivery of direct diagnosis, assessment, psychotherapy, treatment, and other therapeutic intervention services to individuals or groups whose growth, adjustment, or functioning is impaired or who otherwise seek such services, and the delivery of indirect prevention and health promotion activities.

Section 3. A health care provider is a licensed psychologist who has completed appropriate training and supervised experience in health service delivery at the doctoral level. The training and experience shall include supervised experience within one (1) or more health care settings, defined broadly as those concerned with the delivery of direct diagnosis, assessment, psychotherapy, treatment, and other therapeutic intervention services to individuals and groups whose growth, adjustment or functioning is impaired or who otherwise seek services, and the delivery of indirect prevention and health promotion activities. The settings include hospitals, clinics, counseling centers, schools, mental health centers, community agencies, correctional facilities, the judicial system, residential treatment centers, and independent practice.

Section 4. A licensed psychologist who does not have the designation "health service provider" shall not deliver or supervise direct health care services. Those psychologists [granted licensure] in the specialty areas of clinical, counseling, or school psychology shall have

the designation "health service provider". A licensed psychologist with training and experience in health service specialty areas other than clinical counseling, or school may request the board to review his credentials to determine his eligibility for this designation. In addition to completion of a doctoral training program in an area of health service delivery, candidates shall complete required predoctoral and postdoctoral supervised experience requirements in a health care setting as established in this administrative regulation, that are consistent with the requirements of 201 KAR 26:190.

DONALD E. RALPH, Ph.D., Chairman

MARK BRENGELMAN, Legal Counsel

APPROVED BY AGENCY: July 15, 1998

FILED WITH LRC: July 15, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1998 at 9:30 a.m. at the offices of the Division of Occupations and Professions located at Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 18, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

**REGULATORY IMPACT ANALYSIS**

Contact Person: David L. Nicholas

(1) Type and number of entities affected: All licensed psychologists practicing psychology in Kentucky.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no costs associated with this regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: There are no costs associated with this regulation.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition for the:

1. First year following implementation: Any licensed psychologist whose specialty area is other than clinical, counseling, or school wishing to receive health service provider status would be required to request a review from the board.

2. Second and subsequent years: Any licensed psychologist whose specialty area is other than clinical, counseling, or school wishing to receive health service provider status would be required to request a review from the board.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None.

(b) Reporting and paperwork requirements: A request for a change in health service provider status would necessitate a review of the applicant's file.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Trust and agency funds ordinarily used by the board.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The public will be protected by having psychologists practice with health service provider status.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The credentialing of psychologists provides protection to the public.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: It would be more difficult for the board to provide the necessary protection to the public without this regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. If no, please explain why tiering was not applied: Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a or continue to hold a credential. Provisions contained in these administrative regulations provide avenues by which the applicant may appeal actions of the board.

**GENERAL GOVERNMENT CABINET**  
**Kentucky Board of Examiners of Psychology**  
**(Amendment)**

**201 KAR 26:180. Requirements for granting licensure or certification in psychology by reciprocity.**

RELATES TO: KRS 319.032(1)(i)

STATUTORY AUTHORITY: KRS 319.032(1)(i)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.032(1)(i) requires the board to promulgate an administrative regulation governing the granting of a license or certificate through reciprocity. This administrative regulation establishes the requirements for licensure or certification by reciprocity.

Section 1. The board shall issue a license or certificate to an applicant who qualifies for a license or certificate pursuant to an agreement of reciprocity entered into by the board of this jurisdiction with the board or boards of any other jurisdiction or multiple jurisdictions.

Section 2. The applicant for licensure or certification in psychology by reciprocity shall:

(1) Hold a current valid license or certificate in good standing to practice psychology which has been granted by at least one (1) state or the District of Columbia or a Canadian province which maintains a psychology registration board:

(a) That is a constituent member of the Association of State and Provincial Psychology Boards; and

(b) With whom this board has an agreement of reciprocity;

(2) Have a minimum of five (5) years of full-time practice or its equivalent as determined by the board in the other jurisdiction; and

(3) Not have a report of disciplinary action filed with the Association of State and Provincial Psychology Boards.

Section 3. The board shall conduct a face-to-face examination of an applicant for licensure by reciprocity. The applicant shall demonstrate an acceptable level of knowledge of Kentucky mental health law.

Section 4. An applicant for licensure with the health service provider designation shall comply with KRS 319.050(7).

Section 5. If an applicant for licensure does not have a postdoctoral supervised year of experience as required by KRS 319.050(2)(a),

the board may determine that the applicant's practice experience is equivalent to the required year of experience.

Section 6. A person holding the Certificate of Professional Qualification in Psychology (CPQ) issued by the Association of State and Provincial Psychology or any of its successor organizations is deemed to meet the qualifications for licensure by reciprocity as established in this administrative regulation with the exception of Section 3 of this administrative regulation. An applicant for licensure under this section shall be required to meet the requirements established in Section 3 of this administrative regulation.

DONALD E. RALPH, Ph.D., Chairman

MARK BRENGELMAN, Legal Counsel

APPROVED BY AGENCY: July 10, 1998

FILED WITH LRC: July 15, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1998 at 9:30 a.m. at the offices of the Division of Occupations and Professions located at Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 18, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

**REGULATORY IMPACT ANALYSIS**

Contact Person: David L. Nicholas

(1) Type and number of entities affected: Persons applying for licensure in Kentucky by reciprocity.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no costs associated with this regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: There are no costs associated with this regulation.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition for the:

1. First year following implementation: All persons applying for licensure by reciprocity must complete the application process.

2. Second and subsequent years: All persons applying for licensure by reciprocity must complete the application process.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Applications for licensure by reciprocity must be reviewed and approved by the board.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Trust and agency funds ordinarily used by the board.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The public will be protected by having psychologists who are licensed in other states coming under this process.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The credentialing of psychologists provides protection to the public.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: It would be more difficult for the board to provide the necessary protection to the public without this regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a or continue to hold a credential. Provisions contained in these administrative regulations provide avenues by which the applicant may appeal actions of the board.

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Examiners of Psychology  
(Amendment)**

**201 KAR 26:215. Nonresident status.**

RELATES TO: KRS 319.015(8)

STATUTORY AUTHORITY: KRS 319.015(8), 319.032(1)(a)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319.015(8) authorizes a nonresident psychologist temporarily employed in the state to render psychological services for no more than thirty (30) days every two (2) years and requires the board to establish a registration process for nonresident psychologists. This administrative regulation establishes the requirements for registering in Kentucky as a nonresident psychologist.

Section 1. (1) Pursuant to KRS 319.015(8), a nonresident licensee or certificate holder who seeks to practice temporarily in Kentucky shall file a written registration with the board. The registration shall be a written letter sent to the board:

(a) Indicating his desire to practice in Kentucky pursuant to KRS 319.015(8); and

(b) Stating the dates he intends to practice in Kentucky.

(2) Board approval shall be contingent upon:

(a) Receipt of documentation that the nonresident psychologist holds a valid license or certificate in good standing from another jurisdiction; and

(b) Confirmation that the applicant does not have a report of disciplinary action filed with the Association of State and Provincial Psychology Boards.

(3)(a) Nonresident temporary practice pursuant to KRS 319.015(8) shall be conditionally approved by the chairman of the board if:

1. The applicant for temporary practice meets the conditions for practice established by KRS 319.015(8); and

2. The applicant has registered with the board.

(b) The conditional approval shall terminate at the next regularly scheduled meeting of the board. At that meeting, the board shall determine whether to approve the temporary practice.

Section 2. Upon the completion of the thirty (30) day period, the nonresident licensee or certificate holder shall submit a written report to the board of each date on which psychological services were rendered in this state, and the location of the site of those services.

Section 3. For purposes of this administrative regulation, the provision of psychological services on a given date, regardless of the

period of time of those services, shall constitute one (1) day.

Section 4. Pursuant to KRS 319.015(8), the provisions of this administrative regulation shall:

(a) Apply to a nonresident psychologist temporarily employed in the state for a period of less than thirty (30) days every two (2) years; and

(b) Not be used to begin practice in Kentucky by an applicant for temporary or regular licensure or certification pending credentials review.

Section 5. A person licensed or certified to practice psychology in another jurisdiction may practice psychology by electronic or telephonic means in Kentucky if he registers with the board and receives board approval for this practice. A person seeking this approval shall follow the provisions set forth in Sections 1 through 4 of this administrative regulation.

Section 6. A person licensed or certified to practice psychology in another jurisdiction and who is providing service in response to a declared disaster pursuant to an agreement between the American Red Cross and the American Psychological Association's Disaster Response Network may begin practice in Kentucky upon notification to the board.

Section 7. A person practicing pursuant to the provisions of KRS 319.015(8) shall be subject to the provisions of KRS 319.082 and 201 KAR 26:145.

DONALD E. RALPH, Ph.D., Chairman

MARK BRENGELMAN, Legal Counsel

APPROVED BY AGENCY: July 10, 1998

FILED WITH LRC: July 15, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1998 at 9:30 a.m. at the offices of the Division of Occupations and Professions located at Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 18, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

**REGULATORY IMPACT ANALYSIS**

Contact Person: David L. Nicholas

(1) Type and number of entities affected: Persons licensed to practice in other states who wish to practice for a limited period of time in Kentucky.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no costs associated with this regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: There are no costs associated with this regulation.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition for the:

1. First year following implementation: All persons licensed to practice psychology in other states must file a letter with the Kentucky Board.

2. Second and subsequent years: All persons licensed to prac-

tice psychology in other states must file a letter with the Kentucky Board.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Letter notifications must be reviewed and approved by the board.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Trust and agency funds ordinarily used by the board.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The public will be protected by having psychologists who are licensed in other states coming under this process.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The credentialing of psychologists provides protection to the public.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes.

(c) If detrimental effect would result, explain detrimental effect: It would be more difficult for the board to provide the necessary protection to the public without this regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a or continue to hold a credential. Provisions contained in these administrative regulations provide avenues by which the applicant may appeal actions of the board.

**TOURISM DEVELOPMENT CABINET**  
**Department of Fish and Wildlife Resources**  
**(Amendment)**

**301 KAR 1:090. Bow fishing.**

RELATES TO: KRS 150.025(1), 150.175, 150.360

STATUTORY AUTHORITY: KRS [43A.350;] 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to regulate the size or type of any device used for taking wildlife, the method of taking, and the places where taking is permitted. The purpose of this administrative regulation is to define and limit bow fishing. It is necessary to protect the sport fish population of the state. [The commissioner, with the concurrence of the commission, finds it necessary to amend this administrative regulation to provide for night bow fishing and to include trout streams as prohibited bow fishing waters.]

Section 1. Definitions. (1) "Bow and arrow" means a:

(a) Longbow;

(b) Compound bow; or

(c) Crossbow.

(2) "Catfish" means a member of the family Ictaluridae.

Section 2. A person shall not take with a bow and arrow:

(1) Sport fish, as listed in Section 1 of 301 KAR 1:060.

(2) Fish:

(a) Without scales, except catfish, at night;

(b) From the waters listed in Section 5 of 301 KAR 1:075; or

(c) Downstream for 700 yards below Kentucky Dam.

(3) More than five (5) catfish daily. [Definition: The words "bow and arrow" as used in this administrative regulation means any long bow or cross bow with an arrow or bolt with one or more barbs.]

Section 2. Permitted Conditions and Waters. (1) Rough fish may be taken year round by bow and arrow with line attached, except only rough fish having scales may be taken during nighttime hours, from all waters except as specified in subsection (2) of this section.

(2) No bow and arrow may be used within 700 yards below Kentucky Dam or within 200 yards of any other dam in the state. Also excluded for bow fishing are all waters designated as prohibited waters for gigging and snagging in Section 5 of 301 KAR 1:075 (trout waters).

(3) All persons using the bow and arrow for fishing are required to have an appropriate fishing license and may take rough fish from either the bank or from a boat. There is no limit on the number of rough fishes taken.]

C. THOMAS BENNETT, Commissioner

MIKE BOATWRIGHT, Chairman

ANN R. LATTA, Secretary

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: June 12, 1998

FILED WITH LRC: July 15, 1998 at 10 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1998 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, # 1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 21, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406, FAX (502) 564-6508.

**REGULATORY IMPACT ANALYSIS**

Contact Person: John Wilson

(1) Type and number of entities affected: The department has no data on the number of persons who pursue fish with bow and arrow; however, this number is probably less than 500. It is also not known how many will take catfish at night with bow and arrow, as this amendment will allow.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have not impact on costs of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comment received. This administrative regulation will have no impact on costs of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: No reporting or paperwork requirements are imposed by this administrative regulation.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The department will incur no additional costs nor

realize any additional savings.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This administrative regulation imposes no reporting or paperwork requirements.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no effect on state or local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fish and Game Fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No economic impact.

(b) Kentucky: No economic impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: This amendment allows bow fishermen to take catfish at night. The alternative of continuing to prohibit this activity was rejected because there no longer exists a sound biological or social reason for this prohibition.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: Not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons of entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

**TOURISM DEVELOPMENT CABINET**  
**Department of Fish and Wildlife Resources**  
**(Amendment)**

**301 KAR 1:155. Commercial fishing requirements.**

RELATES TO: KRS 150.010, 150.120, 150.170, 150.175, 150.445, 150.450(2), (3), 150.990

STATUTORY AUTHORITY: KRS 150.025(1) [13A.350, 150.450]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1) authorizes the department to prescribe by administrative regulation the methods and devices used to take wildlife, as well as the buying and selling of wildlife. The function of this administrative regulation is to regulate taking fish for commercial use, to avoid conflicts with other interests, and to utilize and conserve the populations of these fishes. [This amendment is necessary to allow commercial fishermen to have unlicensed helpers and to bring this administrative regulation into compliance with the wording and format requirements of KRS Chapter 13A.]

Section 1. Definitions. (1) "Commercial fisherman" means a person holding a valid resident or nonresident commercial fishing license.

(2) "Commercial fishing gear" means the equipment described in 301 KAR 1:146.

(3) "Overflow lake" means a permanent or temporary body of water that receives overflow flood waters from an adjacent stream.

(4) "Sport fish" means those species so designated by 301 KAR 1:060.

(5) "Unlicensed helper" means a person without a commercial fishing license who is assisting a commercial fisherman.

Section 2. Unlicensed Helpers. (1) A commercial fisherman shall not utilize more than one (1) unlicensed helper.

(2) An unlicensed helper shall not use commercial fishing gear or sell fish unless he is accompanied by a licensed commercial fisherman.

Section 3. Tagging And Using Commercial Gear. A person shall:

(1) ~~[Persons shall]~~ Tag commercial gear so that a law enforcement officer ~~[officers]~~ can find and read the tag without undue difficulty.

(2) ~~[Persons shall]~~ Not use commercial gear:

(a) Within fifty (50) yards of the outlet or inlet of an overflow lake.

(b) Within fifty (50) yards of the mouth of a stream except the mouth of the Ohio River.

~~[(c) Within 200 yards below a dam.]~~

(3) ~~[From April 1 through October 31, persons shall]~~ Not use commercial nets from April 1 through October 31:

(a) In bays and inlets of Kentucky or Barkley Lakes; and

(b) For a distance of 200 yards from the mouth of bays or inlets in Kentucky or Barkley Lakes.

Section 4. Sport Fish and Endangered Species. A person ~~[Persons]~~ taking a sport fish or an endangered species by commercial gear shall immediately return the fish, without undue injury, to the waters from which it was taken.

Section 5. Tending Gear and Removing Fish. A person shall:

(1) ~~[Commercial fishermen shall]~~ Tend and remove the fish from:

(a) Baited hoop nets or slat traps at least every seventy-two (72) hours.

~~(b) [(2) Commercial fishermen shall tend and remove the fish from] Other commercial fishing gear at least every twenty-four (24) hours.~~

~~(2) [(3) Fishermen shall] Remove commercial fishing gear from the water when he has [they have] finished fishing.~~

~~[(4) The department may confiscate gear abandoned, not tended regularly, or otherwise used contrary to the statutes and administrative regulations governing commercial fishing.]~~

Section 6. Reporting. Beginning March 1, 1999:

(1) A commercial fisherman shall report his catch monthly to the department:

(a) By the tenth day of each month;

(b) On forms provided by the department.

(2) The department shall not renew the license of a commercial fisherman who does not submit:

(a) A report for each month of the license year, including a month during which he did not fish; or

(b) The information required on the report form.

Section 7. Incorporation by Reference. (1) The Monthly Report of Commercial Fish Harvest in Kentucky, 1998 edition, is incorporated by reference.

(2) It may be obtained or copied at the Department of Fish and Wildlife Resources, #1 Game Farm Road, Frankfort, Kentucky 40601, between 8 a.m. and 4:30 p.m. on normal business days.

C. THOMAS BENNETT, Commissioner

MIKE BOATWRIGHT, Chairman

ANN R. LATTI, Secretary

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: June 12, 1998

FILED WITH LRC: July 15, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1998 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, # 1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 21, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend

the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406, FAX (502) 564-6508.

# REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: There are approximately 500 licensed commercial fishermen in Kentucky. All will be affected by this administrative regulation.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. This administrative regulation will have no impact on cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. The only increase in the cost of doing business will be the time required to complete the monthly reports required by the amendment to this administrative regulation.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Commercial fishermen will be required to submit monthly reports to the department.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The department will spend an additional \$1900 annually on postage. (business reply envelopes).

2. Continuing costs or savings: Same as first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The department will use existing staff to enter data from the monthly reports and compile data.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fish and Game Fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No public comments received. This administrative regulation will not impact economic activities.

(b) Kentucky: No public comments received. This administrative regulation will not impact economic activities.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The alternative of not requiring periodic reporting of commercial fish catch was rejected because of the need for accurate harvest data.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: An accurate record of commercial fish harvest will allow better management of Kentucky's fishery resources.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: not applicable.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None have been identified.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering is not appropriate be-

cause the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons of entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

## TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (Amendment)

### 301 KAR 1:201. Fishing limits.

RELATES TO: KRS 150.470, 150.990(2)

STATUTORY AUTHORITY: KRS 150.025(1), 150.470

NECESSITY, FUNCTION, AND CONFORMITY: KRS 150.025(1)

authorizes the department to promulgate administrative regulations to protect fish species from overharvest, allocate their harvest, maintain ecological balance and improve fishing. This administrative regulation establishes size, daily, and possession limits for fishing.

Section 1. Definitions. (1) "Artificial bait [baits]" means a lure or fly:

(a) Made of:

1. Wood;
2. Metal;
3. Plastic;
4. Feathers;
5. Preserved pork rind; or
6. A similar inert material; and

(b) Not having attached:

1. An insect;
2. Minnow;
3. Fish egg;
4. A worm;
5. Corn;
6. Cheese;
7. Cut bait; or
8. Similar organic bait substance.

(2) "Daily limit" means the creel limit, the maximum number of a particular species or group of species a person may legally take in a day or have in possession while fishing.

(3) "Daylight hours" are defined by KRS 150.010(6).

(4) "Kentucky bass" means the following with a patch of teeth on its tongue:

- (a) Largemouth bass;
- (b) Kentucky bass; or
- (c) Coosa bass.

(5) [(4)] "Lake" means impounded waters from the dam upstream to the first riffle on:

- (a) The main stem river; and
- (b) Tributary streams.

(6) [(5)] "Length" means the distance from the tip of a fish's lower jaw to the tip of its tail, measured with the fish laid flat on a rule and its tail lobes squeezed together.

(7) [(6)] "Possession limit" means the maximum number of fish a person may hold in the field after two (2) or more days of fishing.

(8) [(7)] "Release" means to return a [the return of the] fish:

- (a) In the best possible physical condition;
- (b) Immediately after removing the hook;
- (c) To the water from which it was taken; and
- (d) In a place where the fish's immediate escape shall not be prevented.

(9) [(8)] "Single hook" means a hook with no more than one (1) point.

(10) [(9)] "Size limit" means the minimum legal length of a fish.

(11) [(10)] "Slot limit" means that a person:

- (a) Shall release [protecting] fish within a specified minimum and maximum size; and
- (b) May keep fish above and below the protected size range.

Section 2. Statewide Size and Creel Limits. (1) Except as specified in Section 4 of this administrative regulation or by 301 KAR 1:180,



## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

a person fishing in public or private waters shall observe the following daily possession and size limits.

(a) Black bass: daily limit, six (6); possession limit, twelve (12).

1. Largemouth bass, smallmouth bass or Coosa bass: size limit, twelve (12) inches.

2. Kentucky bass: no size limit.

(b) Rock bass: daily limit, fifteen (15); possession limit, thirty (30); no size limit.

(c) Walleye and their hybrids: daily limit, ten (10); possession limit, twenty (20); size limit, fifteen (15) inches.

(d) Sauger: daily limit, ten (10); possession limit, twenty (20); no size limit.

(e) Muskellunge: daily and possession limit, two (2); size limit, thirty (30) inches.

(f) Chain pickerel: daily limit, five (5); possession limit, ten (10); no size limit.

(g) White bass and yellow bass, singly or in combination: daily limit, thirty (30); possession limit, sixty (60); no size limit.

(h) Striped bass and their hybrids: daily and possession limit, five (5); size limit, fifteen (15) inches.

(i) Crappie: daily limit, thirty (30); possession limit, sixty (60); no size limit.

(j) Rainbow trout and brown trout, singly or in combination: daily and possession limit, eight (8), no more than three (3) of which shall be brown trout; no size limit.

(k) Brook trout: daily and possession limit, two (2); size limit, ten (10) inches.

(2) A person shall release grass carp caught from a lake owned or managed by the department.

(3) A person shall release fish:

(a) Below the minimum size limits established by this administrative regulation;

(b) Within a protected slot limit established by this administrative regulation; or

(c) Of a particular species, if a person has in his possession the daily limit for that species established by this administrative regulation.

(4) A person shall not remove any part of the head or tail of a fish for which there is a size or creel limit until he has completed fishing for the day and has left the water.

(5) A person who wishes to possess sport fish below the size limit or beyond the possession limit shall:

(a) Obtain the fish from a licensed fish propagator or other legal source; and

(b) Retain a receipt or other written proof that the fish were legally acquired.

(6) A person shall release trout unless he:

(a) Has a valid trout permit;

(b) Is exempted from trout stamp requirements by KRS 150.170(3); or

(c) Is fishing in a licensed pay lake stocked with trout by the lake operator.

Section 3. Fishing Season. The fishing season shall be open year round.

Section 4. Exceptions to Statewide Administrative Regulations. A person fishing in the waters listed in this section shall observe the following special requirements. Except as specified in this section, all other provisions of this administrative regulation shall apply to these bodies of water.

(1) Bad Branch, Letcher County. A person shall not fish except with an artificial bait with a single hook.

(2) Bark Camp Creek in Whitley County. Beginning in 1999, from October 1 through March 31, a person shall:

(a) Not fish except with an artificial bait; and

(b) Release trout. [artificial baits with single hooks only shall be used.]

(3) [(2)] Barkley Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Crappie: size limit, ten (10) inches.

(c) Sauger: size limit, fourteen (14) inches.

(4) [(3)] Barren River Lake, including:

(a) Barren River to the Highway 100 bridge;

(b) Long Creek to the Highway 100 bridge;

(c) Beaver Creek to the Highway 1297 bridge;

(d) Skaggs Creek to the Mathews Mill Road bridge; and

(e) Peter Creek to the Peter Creek Road bridge;

1. White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily limit, twenty (20); possession limit, forty (40); size limit, no more than five (5) fish in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer.

2. Crappie: size limit, nine (9) inches.

3. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches. Daily limit may include no more than one (1) and the possession limit no more than two (2) fish less than fifteen (15) inches.

(5) Beaver Lake. Beginning March 1, 1999, a person shall not possess shad or use shad for bait.

(6) [(4)] Bert Combs Lake: a person shall not possess shad or use shad for bait.

(7) [(5)] Boltz Lake: a person shall not possess shad or use shad for bait.

(8) [(6)] Briggs Lake: a person shall not possess shad or use shad for bait.

(9) [(7)] Buckhorn Lake: largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(10) Cane Creek in Laurel County. Beginning in 1999, from October 1 through March 31, a person shall:

(a) Not fish except with an artificial bait; and

(b) Release trout.

(11) [(8)] Carpenter Lake: a person shall not possess shad or use shad for bait.

(12) [(9)] Carr Creek [Fork] Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Crappie: size limit, nine (9) inches.

(13) [(10)] Carter Caves Lake.

(a) Fishing shall be during daylight hours only.

(b) Largemouth bass: daily and possession limit, one (1) fish; size limit [through February 28, 1998, twenty (20) inches; after February 28, 1998], fifteen (15) inches.

(c) A person shall not possess shad or use shad for bait.

(14) [(11)] Cave Run Lake: largemouth bass and smallmouth bass: slot limit - a person may keep fish less than thirteen (13) or greater than sixteen (16) inches and shall release fish between thirteen (13) and sixteen (16) inches.

(15) [(12)] Corinth Lake: a person shall not possess shad or use shad for bait.

(16) [(13)] Cumberland Lake.

(a) Largemouth and smallmouth bass: size limit, fifteen (15) inches.

(b) Striped bass: size limit, twenty-four (24) inches; daily and possession limit, two (2) fish.

(c) Crappie: size limit, ten (10) inches.

(17) [(14)] Cumberland River downstream from Barkley Lake Dam.

(a) Striped bass: daily and possession limit, three (3).

(b) Sauger: size limit, fourteen (14) inches.

(18) [(15)] Cumberland River from Wolfe Creek Dam downstream to the Kentucky-Tennessee state line. Brown trout: size limit, twenty (20) inches; creel limit, one (1).

(19) [(16)] Cyprus AMAX and Robinson Forest Wildlife Management Areas. On impounded waters of the area:

(a) Largemouth bass: size limit, fifteen (15) inches;

1. Through February 28, 1999, daily and possession limit, one (1);

2. Beginning March 1, 1999, daily limit three (3); possession limit, six (6).

(b) Sunfish:

1. Through February 28, 1999, daily and possession limit, ten (10);

2. Beginning March 1, 1999, daily limit, fifteen (15); possession limit, thirty (30).

(c) Channel catfish:

1. Through February 28, 1999, size limit, fifteen (15) inches;

2. Daily and possession limit, four (4).

(d) A person shall not fish:

1. Except during daylight hours; or

2. On Starfire Lake between January 1 and May 31.

(20) [(17)] Dale Hollow Lake.  
 (a) Smallmouth bass: daily limit, two (2); size limit, eighteen (18) inches.  
 (b) Walleye and their hybrids:  
 1. Through February 28, 1999, daily limit, ten (10);  
 2. Beginning March 1, 1999, daily limit, five (5);  
 3. Size limit, sixteen (16) inches.  
 (c) Sauger: daily limit, ten (10); size limit, fourteen (14) inches.  
 (d) Muskellunge: daily limit, one (1).  
 (e) Rainbow trout and lake trout.  
 1. Daily limit, April 1 - October 31: seven (7), no more than two (2) of which may be lake trout. No size limit.  
 2. Daily limit, November 1 - March 31: two (2); size limit, twenty-two (22) inches.  
 (f) Beginning March 1, 1999:  
 1. Largemouth bass: size limit, fifteen (15) inches;  
 2. Black bass: aggregate daily limit, five (5), no more than two (2) of which shall be smallmouth bass.  
 3. Crappie: Size limit, ten (10) inches.  
 (21) [(18)] Dewey Lake.  
 (a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.  
 (b) White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily and possession limit, five (5); size limit, fifteen (15) inches.  
 (22) [(19)] Dix River for two (2) miles downstream from Herrington Lake Dam.  
 (a) A person shall not fish except with an artificial bait. [Artificial baits only-]  
 (b) Brown trout: size limit, fifteen (15) inches.  
 (23) [(20)] Dix River upstream from Herrington Lake. White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily limit, twenty (20); possession limit, forty (40); size limit: no more than five (5) in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches or longer.  
 (24) East Fork Indian Creek in Menifee County. Beginning in 1999, from October 1 through March 31, a person shall:  
 (a) Not fish except with an artificial bait; and  
 (b) Release trout.  
 (25) [(21)] Elkhorn Creek downstream from the confluence of the North and South forks. Largemouth bass and smallmouth bass: slot limit - a person shall release fish between twelve (12) and sixteen (16) inches. The daily limit shall not include more than two (2) fish greater than sixteen (16) inches long.  
 (26) [(22)] Elmer Davis Lake.  
 (a) Largemouth bass and smallmouth bass: slot limit - a person shall release fish between twelve (12); and  
 1. Through February 28, 1999, sixteen (16) inches.  
 2. Beginning March 1, 1999, fifteen (15) inches.  
 (b) A person shall not possess shad or use shad for bait.  
 (27) [(23)] Fishtrap Lake.  
 (a) Largemouth bass or smallmouth bass: size limit, fifteen (15) inches.  
 (b) White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily and possession limit, five (5); size limit, fifteen (15) inches.  
 (28) [(24)] (a) A person shall not possess shad or use shad for bait.  
 (b) Upper Game Farm Lake:  
 1. Largemouth bass and smallmouth bass: [daily limit, two (2);] size limit, fifteen (15) inches.  
 a. Through February 28, 1999, daily limit, two (2).  
 b. Beginning March 1, 1999, daily limit, three (3); possession limit, six (6).  
 2. Channel catfish:  
 a. Through February 28, 1999, daily limit, three (3).  
 b. Beginning March 1, 1999, daily limit, four (4); possession limit, eight (8).  
 (c) Lower Game Farm Lake:  
 1. A person thirteen (13) years or older shall not fish.  
 2. Daily limit, three (3) fish regardless of species.  
 (29) [(25)] Grayson Lake.  
 (a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.  
 (b) Beginning March 1, 1999, white bass, yellow bass, striped

bass and their hybrids, singly or in combination: size limit, fifteen (15) inches, daily and possession limit, five (5) fish.  
 (30) [(26)] Greenbo Lake. A person shall not possess shad or use shad for bait.  
 (31) [(27)] Green River Lake. Crappie: size limit, nine (9) inches.  
 (32) [(28)] Guist Creek Lake. White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily and possession limit, five (5); size limit, fifteen (15) inches.  
 (33) Hawk Creek in Laurel County. Beginning in 1999, from October 1 through March 31, a person shall:  
 (a) Not fish except with an artificial bait; and  
 (b) Release trout.  
 (34) [(29)] Herrington Lake. White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily limit, twenty (20); possession limit, forty (40); size limit: no more than five (5) in a daily limit or ten (10) fish in a possession limit shall be fifteen (15) inches long or longer.  
 (35) [(30)] Kentucky Lake and the canal connecting Kentucky and Barkley lakes.  
 (a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.  
 (b) Crappie: size limit, ten (10) inches.  
 (c) Sauger: size limit, fourteen (14) inches.  
 (36) [(31)] Laurel Lake. Largemouth bass and smallmouth bass, size limit, fifteen (15) inches.  
 (37) [(32)] Lebanon City Lake.  
 (a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.  
 (b) Crappie: size limit, nine (9) inches; daily limit, fifteen (15).  
 (c) Bluegill and shellcrackers (singly or in aggregate): creel limit, thirty (30).  
 (d) Channel catfish: creel limit, five (5).  
 (38) [(33)] Leary Lake.  
 (a) A person shall not fish except during daylight hours. [Fishing shall be during daylight hours only-]  
 (b) Largemouth bass:  
 1. Through February 28, 1999, daily limit, one (1); size limit, fifteen (15) inches.  
 2. Beginning March 1, 1999, daily limit, three (3); possession limit, six (6).  
 (c) Bluegill:  
 1. Through February 28, 1999, daily limit, twelve (12).  
 2. Beginning March 1, 1999, daily limit, fifteen (15), possession limit, thirty (30).  
 (d) Channel catfish:  
 1. Through February 28, 1999, daily limit, two (2).  
 2. Beginning March 1, 1999, daily limit, four (4); possession limit, eight (8).  
 (39) [(34)] Lincoln Homestead Lake.  
 (a) A person shall not fish except during daylight hours. [Fishing shall be during daylight hours only-]  
 (b) Largemouth bass: daily limit, three (3); size limit, fifteen (15) inches.  
 (c) Bluegill and red-ear sunfish: through February 28, 1999, daily limit, ten (10) fish over seven (7) inches, singly or in combination; no limit on fish less than seven (7) inches.  
 (d) Channel catfish:  
 1. Through February 28, 1999, daily limit, three (3).  
 2. Beginning March 1, 1999, daily limit, four (4); possession limit, eight (8).  
 (e) A person shall not possess shad or use shad for bait.  
 (40) [(35)] Lake Malone. Largemouth bass: slot limit - a person [may keep fish less than twelve (12) or greater than fifteen (15) inches and] shall release fish between twelve (12) and fifteen (15) inches.  
 (41) [(36)] Marion County Lake.  
 (a) Largemouth bass: size limit, fifteen (15) inches.  
 (b) A person shall not possess shad or use shad for bait.  
 (42) [(37)] Martins Fork and its tributaries in Harlan County from the Left Fork upstream two and three-tenths (2.3) miles to the Cumberland Gap National Park boundary. A person shall not fish except with an artificial bait with a single hook. [Artificial baits with single hooks only shall be used-]  
 (43) [(38)] Mauzy Lake. Largemouth bass; no size limit.  
 (44) [(39)] McNeely Lake. A person shall not possess shad or use

VOLUME 25, NUMBER 2 – AUGUST 1, 1998

shad for bait.

(45) [(40)] Mill Creek Lake. A person shall not possess shad or use shad for bait.

(46) [(44)] Nolin River Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches except that the daily limit may contain one (1) and the possession limit two (2) bass under fifteen (15) inches.

(b) Crappie: size limit, nine (9) inches.

(47) [(42)] Ohio River.

(a) Walleye, sauger and their hybrids: no size limit; daily limit, ten (10) fish, singly or in combination.

(b) White bass, yellow bass, striped bass and their hybrids: daily limit, thirty (30); no more than four (4) in a daily limit shall [may] be fifteen (15) inches long or longer.

(48) [(43)] Paintsville Lake. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(49) [(44)] Parched Corn Creek, Wolfe County. A person shall not fish except with an artificial bait with a single hook. [Artificial baits with single hooks shall be used.]

(50) [(45)] Peabody Wildlife Management Area (Goose Lake, Island Lake or South Lake):

(a) Largemouth bass:

1. Through February 28, 1999, size limit, twenty (20) inches; daily and possession limit, one (1).

2. Beginning March 1, 1999, size limit, fifteen (15) inches; daily limit, three (3); possession limit, six (6).

(b) Bluegill: daily and possession limit, fifteen (15).

(c) Redbreast sunfish: daily and possession limit, fifteen (15).

(d) Channel catfish:

1. Through February 28, 1999, size limit, fifteen (15) inches; daily and possession limit, two (2).

2. Beginning March 1, 1999, daily limit, four (4); possession limit, eight (8).

(e) Walleye: size limit, fifteen (15) inches; daily and possession limit, one (1).

(f) Crappie: through February 28, 1999, daily and possession limit, ten (10).

(g) A person shall not:

1. Fish:

a. [-] Except during daylight hours;

b.

2. Through February 28, 1998, from October 16 through June 30 on South Lake or Island Lake;

3. Through February 28, 1998, from October 16 through the last day of February on Goose Lake;

4. After February 28, 1998, From October 15 through March 15 on Goose Lake, South Lake or Island Lake.

2. [(h) A person shall not] Take frogs.

(51) [(46)] Poor Fork and its tributaries in Letcher County downstream to the first crossing of Highway 392. A person shall not fish except with an artificial bait with a single hook. [Artificial baits with single hooks only.]

(52) [(47)] Lake Reba.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) A person shall not possess shad or use shad for bait.

(53) Rock Creek from the Bell Farm Bridge to the Tennessee state line. Beginning in 1999, from October 1 through March 31, a person shall:

(a) Not fish except with an artificial bait; and

(b) Release trout.

(54) [(48)] Rough River Lake.

(a) Crappie: size limit, nine (9) inches.

(b) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches, except that the daily limit may contain one (1) and the possession limit two (2) bass under fifteen (15) inches.

(c) White bass: for size and creel limit purposes anglers shall consider fish of the Morone family with an unseparated, U-shaped rear tooth patch on the tongue to be white bass.

(d) Hybrid striped bass: for size and creel limit purposes anglers shall consider fish of the Morone family with a separated rear tooth patch on the tongue to be hybrid striped bass.

(55) [(49)] Shanty Hollow Lake.

(a) Largemouth bass: size limit, fifteen (15) inches.

(b) A person shall not possess shad or use shad for bait.

(56) [(50)] Shillalah Creek, Bell County, outside the Cumberland Gap National Park. A person shall not fish except with an artificial bait with a single hook. [Artificial baits with single hooks shall be used.]

(57) [(54)] Spurlington Lake. A person shall not possess shad or use shad for bait.

(58) [(52)] Sympson Lake: Largemouth bass: size limit, fifteen (15) inches.

(59) [(53)] Taylorsville Lake.

(a) Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

(b) Crappie: daily limit, fifteen (15); possession limit, thirty (30); size limits, nine (9) inches.

(c) White bass, yellow bass, striped bass and their hybrids, singly or in combination: daily and possession limit, five (5); size limit, fifteen (15) inches.

(60) [(54)] Tennessee River downstream from Kentucky Lake Dam.

(a) Striped bass: daily and possession limit, three (3).

(b) Sauger: size limit, fourteen (14) inches.

(61) [(55)] Yatesville Lake. Largemouth bass and smallmouth bass: size limit, fifteen (15) inches.

C. THOMAS BENNETT, Commissioner

MIKE BOATWRIGHT, Chairman

ANN R. LATTI, Secretary

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: June 12, 1998

FILED WITH LRC: July 15, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1998 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 21, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406, FAX (502) 564-6508.

REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: Approximately one million anglers fish Kentucky Waters each year. Only a fraction of those will be affected by the provisions of the amendments to this administrative regulation.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments received. This amendment to an existing administrative regulation should have no impact on costs of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No comments received. This amendment to an existing administrative regulation should have no impact on costs of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: This amendment to an existing administrative regulation will not affect compliance, reporting or paperwork requirements.

2. Second and subsequent years: Same as for first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: This amendment to an existing administrative regulation will create no additional direct or indirect costs or savings.

2. Continuing costs or savings: Same as for first year.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: To the extent that this administrative regulation improves fishing, the sale of fishing licenses and local tourist revenue could be positively impacted.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fish and Game Fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: No comments received. This amendment to an existing administrative regulation should have no negative impact, and may have some positive impact in the geographical areas where implemented.

(b) Kentucky: This amendment to an existing administrative regulation should have no negative impact, and may have some positive impact on Kentucky.

(7) Assessment of alternative methods; reasons why alternatives were rejected: At every body of water affected by the amendment to this administrative regulation, the alternative chosen was considered the most viable means of protecting fishery resources while allowing optimum angling opportunity for the species involved.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation will allow outdoor recreation while protecting the ecological balance of Kentucky's waters.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Fishing size and creel limits prevent overfishing and population imbalances between predator and prey species. Without the size and creel limits imposed by this administrative regulation, both the recreational fishery and ecological balance in Kentucky's waters would suffer.

(9) Identify and statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering was used to the extent that specific regulations are applied to different bodies of water in an effort to create maximum recreational fishing opportunities while maintaining adequate fish populations and favorable environmental conditions. In other instances, tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates. Disparate treatment of any persons or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

**DEPARTMENT OF AGRICULTURE**  
**Division of Animal Health**  
**(Amendment)**

**302 KAR 20:040. Entry into Kentucky.**

RELATES TO: KRS Chapter 257

STATUTORY AUTHORITY: KRS 257.030

NECESSITY, FUNCTION, AND CONFORMITY: To establish health requirements for entry, including sales or exhibition, for livestock and animals into Kentucky.

Section 1. General Provisions. (1) All animals shall be accompanied by a certificate of veterinary inspection unless otherwise provided in this administrative regulation.

(2)(a) A permit may be obtained by calling (502) 564-3956, Monday through Friday, 8 a.m. through 4:30 p.m.

(b) Requests for permits made after 4:30 p.m., Monday through Friday, and on weekends and holidays shall be telephonically recorded.

(c) Permits requested pursuant to paragraph (b) of this subsection shall not be issued for certain species designated by the chief livestock health official.

(d) Permit numbers obtained pursuant to this subsection shall be recorded on the certificate of veterinary inspection.

(3) All required testing shall be conducted by a state-federal approved laboratory.

(4) Certificate of Veterinary Inspection shall be void thirty (30) days after date of issuance for entry into Kentucky, except as noted.

**Section 2. Cattle. (1) General requirements.**

(a) A permit shall be required prior to entry for all cattle except steers and spayed heifers. Permit number shall be recorded on Certificate of Veterinary Inspection.

(b) Cattle moving directly from a farm of origin may enter an approved state-federal livestock market in Kentucky without a permit or Certificate of Veterinary Inspection as described in 302 KAR 20:070.

(c) If animals are from a tuberculosis accredited or a brucellosis certified herd, Certificate of Veterinary Inspection shall show herd accreditation and herd certification number with date of last herd test for tuberculosis and brucellosis.

(2) Specific diseases.

(a) Brucellosis. Import requirements for cattle originating in Class "A" or Class "Free" states or areas:

1. Sexually intact bovines twelve (12) months of age or older shall be negative to an official brucellosis test within thirty (30) days prior to entry unless the cattle:

a. Originate directly from a brucellosis certified free herd;

b. Are official calfhood vaccinates of the dairy breed, less than twenty (20) months of age;

c. Are official calfhood vaccinates of the beef breeds less than twenty-four (24) months of age; or

d. Are open heifers less than eighteen (18) months of age designated for feeding purposes.

2. Diversion of "feeder" heifers for use as breeding animals without meeting applicable test requirements shall be a violation of this administrative regulation.

3. Heavy springers and cows postpartum shall be test eligible regardless of age.

4. Heifers for exhibition in carcass classes shall be officially identified but shall not be required to be brucellosis tested if accompanied by a certificate of veterinary inspection.

5. Bison shall meet the same requirements as cattle.

(b) Tuberculosis.

1. Cattle six (6) months of age or older for dairy, breeding or exhibition purposes shall be negative to an official tuberculin test within sixty (60) days prior to date of entry, unless exempted by one (1) of the following:

a. The cattle originate directly from a tuberculosis accredited free herd; or

b. The cattle originate directly from a tuberculosis eradicated free state; or

c. Unweaned-nursing calves accompanied by their dam shall be officially identified but shall not be required to be tuberculosis tested unless they are offered for sale individually.

2. Cattle classified as suspects or cattle originating from a quarantined herd shall not be imported.

3. Reciprocal agreements with adjoining states may be effective in lieu of specific requirements.

4. Bison six (6) months of age or older shall be negative to an approved tuberculosis test within sixty (60) days prior to entry, or originate from an accredited herd.

5. Feeder cattle from a modified accredited state or area are exempt from tuberculosis testing requirements unless required by the chief livestock health official.

6. Steers and heifers for carcass classes shall be officially identified.

fied but shall not be required to be tuberculosis tested if originate from an accredited herd or from a tuberculosis free state.

(3) Other disease requirements.

(a) Scabies. No cattle affected with or exposed to scabies or from an area quarantined because of scabies shall be imported, shipped, driven or otherwise moved into Kentucky except in accordance with regulations of the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture, and only then after first securing written permit from the chief livestock health official or his authorized representative.

(b) Ticks. No cattle infested with ticks (*Margarophus Annulatus*) or exposed to tick infestation shall be shipped, trailed, driven or otherwise moved into Kentucky for any purpose.

(c) No cattle from a state-federal tick quarantined area shall be shipped, trailed, driven or otherwise moved into Kentucky except in accordance with regulations of the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture, and only then after first securing written permit from the chief livestock health official or his authorized representative.

(d) Cattle infected with warts, ringworm or any contagious, infectious or communicable disease are not eligible for entry.

(4) Other movements. Slaughter cattle. Cattle consigned for immediate slaughter may be imported without official test for brucellosis or tuberculosis provided such cattle are consigned for immediate slaughter to a recognized slaughtering establishment under state, federal or municipal inspection or to an approved state-federal stockyard or federal stockyard for reconsignment to a recognized slaughter establishment. Animal(s) diverted en route will be in violation of this regulation.

(5) Exhibition. All cattle shall be in compliance with requirements noted above and shall be accompanied with a Certificate of Veterinary Inspection issued within thirty (30) days prior to entry.

### Section 3. Horses. (1) General requirements.

(a) All horses and other equidae entering Kentucky shall be accompanied by a Certificate of Veterinary Inspection except horses and other equidae purchased at an approved out-of-state horse sale. Certificate shall include all tests that have been conducted as well as all vaccinations including vaccination date and type of vaccine used.

(b) Attached to the Certificate of Veterinary Inspection shall be a copy of a certificate of report from a laboratory approved by the USDA showing the animal(s) to be negative to an AGID test or other USDA approved test for equine infectious anemia.

(c) Horses with evidence of a contagious, infectious or communicable disease or exposure thereto shall not be eligible for entry.

(2) Specific diseases.

(a) Equine infectious anemia.

1. All horses and other equidae six (6) months of age or older except unweaned foals accompanied by their dam, offered for sale shall be negative to an AGID test or other USDA approved test for equine infectious anemia within six (6) months prior to entry except horses and other equidae purchased at an out-of-state approved horse sale.

2. Horses and other equidae purchased at an out-of-state approved horse sale:

(b) May move directly to a Kentucky approved auction market. On entry into the market all horses and other equidae shall have an EIA test conducted under the requirements of 302 KAR 2.065, Section 4(1); or

(c) A Kentucky licensed livestock dealer may purchase horses and other equidae and may move animals directly to his Kentucky premises. On entry into the premises animals shall be kept separate and apart from other animals on the premises. Horses may move to an approved horse sale within fourteen (14) days postentry or shall have an official EIA test conducted within fourteen (14) days postentry. The owner shall document the movement of horse(s) to an approved horse sale and when horses remain on the dealers premises the dealer shall document that an official EIA test has been conducted within the required fourteen (14) days postentry.

(d) An entry permit shall be required and shall be obtained prior to entry into Kentucky. The permit may be obtained by calling (502) 564-3956 day or night.

(e) In lieu of a Certificate of Veterinary Inspection a bill of lading or waybill shall accompany horses on entry. The bill of lading or

waybill shall document entry permit, number of horses purchased, individual horse identification, sex, age, color, brand, tattoo (if available), market sale identification and all other markings.

(f) All horses and equidae purchased from an out-of-state approved horse sale shall be available for inspection by an agent of the Board of Agriculture.

(g) Horses may be placed under quarantine on entry. Quarantine shall be released when requirements of 302 KAR 20:040, Section 3(2)(a) have been met.

(h) A licensed livestock dealer may move horses that are origin out-of-state but movement shall be directly to a Kentucky approved horse sale.

(i) Horses may move from an out-of-state farm of origin but movement shall be directly from the farm of origin to a Kentucky approved horse sale.

3. [2:] All horses and other equidae six (6) months of age or older, except unweaned foals accompanied by their dam, offered for entry for reasons other than sale (i.e., entry into fairgrounds, livestock showgrounds, public boarding stables, trail rides, racing, etc.) shall be negative to an AGID test or other USDA approved test for equine infectious anemia within twelve (12) months prior to entry.

(j) [(b)] Veterinarian's statement that examination was made within the past thirty (30) days and revealed the animal(s) to be free from symptoms of a contagious, infectious or communicable disease or exposure thereto.

### Section 4. Swine. (1) General requirements.

(a) A permit shall be obtained prior to movement for all swine entering for breeding and feeding purposes.

(b) All swine shall be officially identified by a state-federal approved identification, except as noted in 302 KAR 20:220.

(c) If animals are from validated and qualified herds, the Certificate of Veterinary Inspection shall show herd validation and qualification number with date of last herd test for brucellosis and pseudorabies.

(2) Specific diseases.

(a) Garbage fed swine. Swine fed raw garbage shall not be imported for any purpose. Swine fed properly cooked garbage are eligible for import directly to a state or federal inspected slaughtering establishment only.

(b) Brucellosis. All swine for breeding purposes six (6) months of age or older shall be negative to an official brucellosis test within thirty (30) days prior to entry or originate directly and immediately from a validated herd. No agglutination in dilution of 1-50 shall be accepted unless the individual or individuals to be imported are negative to an official card or PCFIA test. On entry, animals must be quarantined for no less than thirty (30) days and must show a negative postmovement brucellosis test within thirty (30) to sixty (60) days of entry.

(c) Pseudorabies. All swine imported for breeding, sale or exhibition purposes shall be negative to an official blood test within thirty (30) days prior to entry or originate directly and immediately from a qualified herd, and originate from a farm free of pseudorabies for the past six (6) months as evidenced on the Certificate of Veterinary Inspection. On entry, animals must be quarantined and shall show a negative postmovement pseudorabies test within thirty (30) to sixty (60) days of entry.

(d) Feeder pigs. All feeder pigs must also comply with 302 KAR 20:210, Pseudorabies surveillance.

(3) Other movements. Farm premises. Identity to the farm of origin must be maintained on all breeding and feeding swine imported from farm premises to an approved stockyard or farm of destination.

(4) Exhibition. All swine shall be in compliance with requirements noted above for swine with a Certificate of Veterinary Inspection issued within thirty (30) days prior to entry.

Section 5. Sheep. (1) General requirements. Certificate of Veterinary Inspection must have prior approval by the chief livestock health official of the state of origin.

(2) Specific diseases.

(a) Scrapie.

1. Entry for sale. No sheep or lambs shall be imported that originate from or known to be exposed to flocks listed as a scrapie affected surveillance flock by USDA APHIS VS. Flocks enrolled in the USDA Voluntary Scrapie Flock Certification Program (VSFC) shall be eligible

for entry for sale. The Certificate of Veterinary Inspection shall document the flock is in compliance with the USDA VSFC Program.

2. Entry for exhibition.

a. Sheep or lambs shall be eligible for exhibition which originate from a flock enrolled in the USDA Voluntary Scrapie Flock Certification Program (VSFC).

b. Sheep and lambs which originate from a flock listed as a surveillance flock by USDA APHIS Veterinary Services may be eligible for exhibition only if no clinical scrapie has occurred in the origin flock within the last eighteen (18) months and if no animal(s) from the flock of origin had positive scrapie confirmed by the National Veterinary Services Laboratory (NVSL) within the past eighteen (18) months. A statement by the veterinarian issuing Certificate of Veterinary Inspection shall document origin flock is in compliance with the USDA VSFC Program and the origin flock has not had clinical scrapie within the past eighteen (18) months and no animal(s) from the origin flock has been diagnosed as positive for scrapie by NVSL within the past eighteen (18) months.

c. All sheep and lambs for exhibition shall be in compliance with other requirements as noted in this administrative regulation for sheep and lambs and in addition shall be identified individually by ear or flank tattoo, ear tag or microchip. Such identification shall be entered on an approved Certificate of Veterinary Inspection.

(b) Scabies. All sheep or lambs for breeding or feeding purposes imported from a farm, ranch or like premises shall be accompanied by an approved Certificate of Veterinary Inspection indicating such sheep and lambs originated directly and immediately from an official scabies eradicated free area.

(c) Sore mouth. Any sheep or lambs showing lesions of contagious exythma shall not be imported.

(d) Sheep and lambs infected with a contagious, infectious and communicable disease are not eligible for entry, sale or exhibition.

(2) Other movements. Healthy sheep and lambs may be imported into Kentucky for immediate slaughter when consigned directly to a recognized slaughtering center approved by the chief livestock health official of Kentucky or to a public stockyard, a state-federal approved stockyard, concentration point or public stockyard when reconsignment from that point is to immediate slaughter.

(3) Exhibition. All sheep and lambs for exhibition shall be in compliance with requirements noted above as specified for sheep and in addition shall be identified individually by ear or flank tattoo, ear tag or microchip. Such identification shall be entered on an approved Certificate of Veterinary Inspection.

Section 6. Goats. (1) Specific diseases.

(a) Scabies. All goats must originate from a scab-free area.

(b) Scrapie. No goats from a herd under surveillance for scrapie or those that are known to have been exposed to or that are progeny shall be imported.

(c) Brucellosis. Animals six (6) months of age or older shall have an official negative test within thirty (30) days prior to entry or originate directly and immediately from a certified herd.

(d) Tuberculosis. Animals six (6) months of age or older shall have an official negative tuberculin test within sixty (60) days prior to entry or originate directly and immediately from accredited herd.

(2) Exhibition. All goats for exhibition shall be in compliance with requirements noted above as specified for goats with a Certificate of Veterinary Inspection issued within thirty (30) days prior to entry.

Section 7. Poultry. (1) General requirements. Poultry shall be individually identified with an official leg or wing band on the Certificate of Veterinary Inspection which shall accompany the animals.

(2) Specific diseases. Salmonella Pullorum. Negative agglutination test within thirty (30) days prior to date of entry. The laboratory conducting the test and test results shall be recorded on a Certificate of Veterinary Inspection and certificate shall accompany poultry.

(3) Other movements. Chicks and hatching eggs shall originate from a flock under the National Poultry or National Turkey Improvement Plan.

(4) Exhibition. Certificate of Veterinary Inspection stating compliance with above requirements and in addition thereto all poultry shall be inspected prior to exhibition for evidence of any contagious, infectious, or communicable disease of poultry. Evidence of any contagious, infectious or communicable disease shall be justification for the

elimination of said poultry from exhibition or sale at no expense to the Commonwealth of Kentucky.

Section 8. Psittacine Birds. As regulated by 9 CFR Part 82.

Section 9. Dogs and Cats. (1) All dogs over four (4) months of age for sale or exhibition shall be accompanied by a Certificate of Veterinary Inspection signed by a licensed, accredited veterinarian stating that they are free from all infectious diseases, did not originate within an area under quarantine for rabies or from an area where rabies is known to exist and has not been exposed to rabies. All dogs over four (4) months of age shall be vaccinated against rabies not less than fourteen (14) days nor more than twelve (12) months prior to date of consignment if killed virus vaccine is used. Any vaccine approved for three (3) year immunity by the "Compendium of Animal Rabies Vaccines" prepared by the Association of State Public Health Veterinarians, (Inc.); qualifies dog if it is one (1) year of age when vaccinated: provided, show or performing dogs to be within the state temporarily for a period of ten (10) days shall not be required to furnish a Certificate of Veterinary Inspection.

(2) All cats shall be in compliance to above requirements for dogs provided the animals are vaccinated for rabies if four (4) months of age or older not less than fourteen (14) days nor more than twelve (12) months prior to date of consignment with a vaccine approved by the state veterinarian and the Bureau for Health Services, Kentucky Cabinet for Human Resources.

Section 10. Fur Bearing Animals, Domesticated Wild Animals and Zoo Animals. Wild and semiwild animals under domestication or in custody may be imported into the state if accompanied by a permit and Certificate of Veterinary Inspection and provided that a report of the number of animals is made to the chief livestock health official of Kentucky within ten (10) days and that immediate opportunity for examination is afforded a representative of the Division of Animal Health, Kentucky Department of Agriculture, to determine the health status of such animal or animals and the imports are presented for the administration of all laboratory procedures and tests deemed necessary by the chief livestock health official of Kentucky. Transportation permit required on wild, game animals, birds and fish. Permit to be obtained from Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601 (telephone (502) 564-3400).

Section 11. Ratites (Ostrich, Emu, Rhea, Cassowary, Kiwi, etc.). (1) General requirements.

(a) A permit shall be obtained by calling (502) 564-3956 weekdays between the hours of 8 a.m. to 4:30 p.m. prior to entry into Kentucky. Permit number shall be recorded on the Certificate of Veterinary Inspection and certificate shall accompany ratite(s) on entry.

(b) All ratites shall have a permanent official identification approved by a state-federal agency.

(c) Any ratite with evidence of a contagious, infectious or communicable disease shall not be eligible for entry.

(2) Specific diseases.

(a) Ratites shall be negative to an official test for Avian Influenza within thirty (30) days prior to entry.

(b) Ratites shall be negative to an official test for Salmonella Pullorum within thirty (30) days prior to entry.

(c) Certificate of Veterinary Inspection shall include a statement that ratites are healthy and are not known to have been exposed to any contagious, infectious or communicable diseases within the last six (6) months.

(3) Exhibition. Ratites presented for exhibition shall be in compliance with requirements noted above as specified for ratites with a Certificate of Veterinary Inspection issued within thirty (30) days prior to entry.

Section 12. Camelids (Llamas, Alpacas, Camels, etc.). (1) General requirements.

(a) A permit shall be obtained prior to entry of camelids into Kentucky by calling (502) 564-3956 weekdays between the hours of 8 a.m. to 4:30 p.m. Permit number shall be recorded on Certificate of Veterinary Inspection and certificate shall accompany animal(s) on entry.



## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

(b) Camelids not weaned, when accompanied by their dam, shall be identified and recorded on the dam's Certificate of Veterinary Inspection.

(2) Specific diseases.

(a) Brucellosis. Camelids six (6) months of age or older shall be negative to an official brucellosis test within thirty (30) days prior to entry.

(b) Tuberculosis. Camelids six (6) months of age or older shall be negative to an official axillary tuberculin test within sixty (60) days prior to entry.

(3) Exhibition. All camelids for exhibition shall be in compliance with requirements noted above as specified for camelids with a Certificate of Veterinary Inspection issued within thirty (30) days prior to entry.

BILLY RAY SMITH, Commissioner, Chairman

MARK FARROW, General Counsel

APPROVED BY AGENCY: July 1, 1998

FILED WITH LRC: July 2, 1998 at noon

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Tuesday, August 25, 1998 at 1 p.m. at the Department of Agriculture, 7th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interest in being heard at this hearing shall notify this agency in writing by August 18, 1998, of their intent to attend. If no notification of intent to attend is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wished to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Mark Farrow, General Counsel/Chief of Staff, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696 – Phone, (502) 564-2133 – Facsimile.

### REGULATORY IMPACT ANALYSIS

Contact Person: Dr. D. L. Notter, State Veterinarian

(1) Type and number of entities affected: Seventeen (17) approved equine auction markets.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Less requirements would need to be met by the consignor of individual equine.

2. Second and subsequent years: No additional requirements.

(3) Effects on the promulgating administrative body: Less regulatory efforts would be required permitting Department employees to concentrate their efforts on more serious problems.

(a) Direct and indirect costs or savings:

1. First year: Less surveillance by department inspectors at market sites.

2. Continuing costs or savings: Same as for the first year.

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: No additional paperwork required.

(4) Assessment of anticipated effect on state and local revenues: None anticipated.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The department currently budgets for implementing this program. There is not expected to be

any additional cost as a result of this amended regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: No public comments received.

(b) Kentucky: All comments received have been supportive of these amended changes being implemented as soon as possible.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The only alternative method would be to require the test prior to the animal entering the premise. This would require additional regulatory effort and would be of little benefit to the low prevalence of this virus.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. All animals selling at approved auction markets will be tested at the time of the sale treating in-state and out-of-state equine equally with no bias.

### TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Carriers (Amendment)

#### 601 KAR 1:115. Taxicabs, limousines, and disabled persons vehicles.

RELATES TO: KRS 186.276, 186.281, 186.286, Chapter 281

STATUTORY AUTHORITY: KRS 281.600

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation provides general procedures for operation of a city or county taxicab, a city or county limousine, or a disabled persons carrier business. It further establishes [as it pertains to] information that must be filed with the cabinet or provided to the public.

Section 1. Definitions. (1) "City limousine certificate" means as defined in KRS 281.014.

(2) "City taxicab certificate" means as defined in KRS 281.014.

(3) "County limousine certificate" means as defined in KRS 281.014.

(4) "County taxicab certificate" means as defined in KRS 281.014.

(5) "Disabled persons certificate" means as defined in KRS 281.014.

(6) "Origin of operation" means the place at which the passenger is picked up by the taxicab, limousine, or disabled persons vehicle.

(7) "Suburban area" means as defined in KRS 281.012.

Section 2. Procedure; Sale, [or] Transfer, or Lease of Taxicab, Limousine, or Disabled Persons [Taxi] Certificate. (1) Upon the filing of an application for approval of a sale, [or] transfer or lease of a city or county taxicab, city or county limousine, or disabled persons certificate or portion of one (1) of these certificates [thereof], the cabinet shall issue notice in accordance with 601 KAR 1:030 [1:070].

(2) If a [in the event no] protest is not filed in accordance with 601 KAR 1:030, the commissioner may approve the sale, [and] transfer, or lease without a hearing. This shall be construed to include the sale, [or] transfer, or lease of the right to operate one (1) or more taxicabs, limousines, or disabled persons vehicles. [Should the applicant receive no notification from the cabinet prior to the date set for hearing, an appearance shall be made at the time and place set forth in the notice thereof prepared to proceed with the case.]

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

Section 3. City [2:] Taxicab and City Limousine Operations. (1) A city taxicab or city limousine certificate shall ~~[All taxicab-certificates will]~~ be issued to allow origin of operations in ~~[operate at]~~ a designated town or city and its suburban area. ~~[and all operations must be at or from such]~~

(2)(a) Each trip of the certificate holder shall originate in the designated town or city and its suburban area.

(b) The destination selected by the passenger does not have to be in the designated town or city and its suburban area.

(c) If a passenger selected a destination which was not located in the certificate holder's designated town or city and its suburban area, at the passenger's request the certificate holder may return the passenger to a point within the certificate holder's designated town or city and its suburban area.

(3)(a) An operator who has secured a certificate to operate in [at] a designated town or city and its suburban area shall ~~[will]~~ not be permitted to change the place of origin of operations without applying for and receiving additional authority pursuant to KRS 281.620.

(b) Origination of an operation in ~~[Operations from]~~ any city or town or its suburban area other than designated in the certificate shall constitute a cause for suspension or cancellation of the certificate.

Section 4. County Taxicab, County Limousine, or Disabled Persons Carrier Operations. (1) A county taxicab, county limousine, or disabled persons certificate shall be issued to allow origin of operations any place within a designated county.

(2)(a) Each trip of the certificate holder shall originate in the designated county.

(b) The destination selected by the passenger does not have to be in the designated county.

(c) If a passenger selected a destination which was not located in the certificate holder's designated county, at the passenger's request the certificate holder may return the passenger to a point within the certificate holder's designated county.

(3)(a) An operator who has secured a certificate to operate in a designated county shall not be permitted to change the county of origin of operations without applying for and receiving additional authority pursuant to KRS 281.620.

(b) Origination of an operation from any county not designated in the certificate shall constitute a cause for suspension or cancellation of the certificate.

Section 5. [3:] List of Drivers. (1) Each taxicab, limousine, or disabled persons certificate holder ~~[All taxicab-operators]~~ shall maintain a complete list of the ~~[taxi]~~ drivers employed by the certificate holder ~~[such operator]~~.

(2) This list shall be on file at the office or cab stand of the ~~[such]~~ operator, and will be available for inspection at any time.

(3) This list shall contain the name, address, age, and the operator's license ~~[and driver or chauffeur's badge]~~ number of each driver. Any change in ~~[and all changes of]~~ drivers shall be promptly noted on the ~~[said]~~ list.

(4) Each certificate holder, prior to hiring a new driver, shall:

(a) Ensure that the driver has a valid operator's license; and

(b) Obtain and review the driving history record of the driver.

(5) Annually, the certificate holder shall obtain and evaluate an updated copy of the driving history record of each of his drivers.

Section 6. [4:] Decrease in Number of Taxicabs, Limousines, or Disabled Persons Vehicles [Cabs] Operated. (1) Whenever any taxicab, limousine, or disabled persons certificate holder has decreased ~~[operator desires to decrease]~~ the number of taxicabs, limousines, or disabled persons vehicles ~~[cabs]~~ which he has in operation, he may do so by notifying the cabinet and surrendering the tag ~~[or tags]~~ issued to the taxicab, limousine, or disabled persons vehicle ~~[such cab or cabs]~~ by the cabinet. The certificate holder may ~~[Should any taxicab operator,]~~ at any time during the same year, ~~[desire to]~~ replace in operation the taxicab, limousine, or disabled persons vehicle ~~[any cab so]~~ dropped, ~~[he must do so]~~ by notifying the cabinet and procuring the proper tag ~~[or tags]~~.

(3) If the cabs which are dropped are not properly replaced in operation within three (3) years of the next renewal date of the taxicab certificate, such cabs so dropped and not replaced will constitute a forfeiture of such cabs, and an application will be necessary before the

replacement of such cabs will be authorized.

Section 7. [5:] Trip Records. (1) A taxicab, limousine, or disabled persons certificate holder ~~[All taxicab-operators-certificated-to-operate one (1)-or-more-taxicabs-from-a-city-of-the-first-or-second-class-within the Commonwealth-or-operating-into-such-a-city-in-intrastate-commerce-with-a-point-of-origin-or-destination-outside-this-state,]~~ shall maintain an accurate record of the origin, destination, driver, vehicle, and date of each trip ~~[all trips]~~ made by each of its licensed taxicabs, limousines, or disabled persons vehicles.

(2) These records may be the daily log reports kept by the drivers.

(3) These origin and destination reports shall be kept by the certificate holder ~~[operator]~~ for at least one (1) year and shall be available for inspection by the Transportation Cabinet, other state government agency, or a law enforcement agency.

Section 8. Taxicab, Limousine, and Disabled Persons Vehicle Identification Cards. (1) An application or renewal application for a Kentucky taxicab, limousine, or disabled persons vehicle identification card and plate shall be made on form TC 95-39, "Application for Kentucky Passenger Fee Receipt Card for Year \_\_\_\_\_"

for each vehicle to be operated as a taxicab, limousine, or disabled persons vehicle.

(2) If the vehicle is leased, the Kentucky license plate number and name of the lessor shall also be provided.

(3) Each taxicab, limousine, or disabled persons vehicle identification card and plate shall be renewed annually pursuant to KRS 186.281.

(4) A certificate holder who needs to transfer an identification plate from the motor vehicle for which it was issued to another shall complete and file with the Division of Motor Carriers, form TC 95-37, "Affidavit". The following information shall be sent with the completed form TC 95-37:

(a) A copy of the vehicle registration or title on the new motor vehicle needed to be placed in operation;

(b) Proof that the new vehicle has been added to the liability insurance policy of the certificate holder;

(c) The original fee receipt card issued with the identification plate. If the original is not available, a sworn statement shall be attached explaining why the fee receipt card is not available; and

(d) If the new vehicle is not registered to the certificate holder, a completed form TC 95-15, "Equipment Lease Agreement."

Section 9. Material Incorporated by Reference. (1) The following material is incorporated by reference as a part of this administrative regulation:

(a) Form TC 95-39, "Application for Kentucky Passenger Fee Receipt Card for Year \_\_\_\_\_" as revised by the Transportation Cabinet in January 1995;

(b) Form TC 95-37, "Affidavit" as revised by the Transportation Cabinet in September 1996; and

(c) Form TC 95-15, "Equipment Lease Agreement" as revised by the Transportation Cabinet in 1988.

(2) The material incorporated by reference in this administrative regulation may be viewed, copied, or obtained from the Division of Motor Carriers, P.O. Box 2007, 3rd Floor State Office Building, 501 High Street, Frankfort, Kentucky 40602. The telephone number of the division is (502) 564-4540. The hours of operation of the division are 8 a.m. through 4:30 p.m., weekdays, local prevailing time.

ED LOGSDON, Commissioner  
JAMES C. CODELL, III, Secretary  
TODD SHIPP, Assistant General Counsel

APPROVED BY AGENCY: July 14, 1998

FILED WITH LRC: July 14, 1998 at 4 p.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on August 24, 1998 at 3 p.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, 4th Floor Hearing/Conference Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by August 17, 1998 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given the opportunity to

comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by August 17, 1998. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on August 24, 1998. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Charles Harman, Staff Assistant, Transportation Cabinet, State Office Building 10-13, 501 High Street, Frankfort, Kentucky 40622, (502) 564-7650, Fax: (502) 564-5238.

#### REGULATORY IMPACT ANALYSIS

Contact person: Charles Harman

(1) Type and number of entities affected: There are currently 546 holders of a taxicab certificate of public convenience and necessity; 93 holders of limousine certificates, and 170 holders of certificates to operate disabled persons motor carriers.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The changes in this administrative regulation should have no impact on the cost of living or employment anywhere in the Commonwealth of Kentucky.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The changes in this administrative regulation will require each certificate holder to purchase a \$3 driving history record on each of their drivers. Some escrowed certificates will be reactivated and others will be forfeited.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Two of the changes in this administrative regulation will require additional compliance, reporting or paperwork requirements. The first is that all certificate holders will have to check the driving history record of each of their drivers. The second is that any motor vehicles which have been placed in escrow will have to be reactivated or removed from their certificate.

2. Second and subsequent years: The certificate holder will have to obtain and evaluate a copy of the driving history record for each of his drivers.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The Transportation Cabinet will have to re-issue certificates to each of the certificate holders who choose to not reactivate their escrowed motor vehicles.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The road fund as appropriated to the Department of Vehicle Regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: The administrative regulation will have no economic impact in Kentucky.

(b) Kentucky: Same

(7) Assessment of alternative methods; reasons why alternatives were rejected: Once it was determined that the Transportation Cabinet has no authority to allow vehicles being operated pursuant to a certificate of public convenience and necessity to be escrowed the administrative regulation had to be amended to terminate the process. Another item discussed was related to safety. The decision was made not to require a safety inspection for these motor vehicles

at this time, since the majority of them will be inspected under the provisions of 603 KAR 7:080, Human Services Transportation. However, it did not seem to be an unreasonable burden to require each certificate holder to annually review and evaluate the driving history record of each of the drivers. This will allow a certificate holder to set higher driver standards which should have a positive impact on public safety.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Requiring certificate holders to annually review and evaluate the driving history record of each of their drivers should add to the safety of the motoring public.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Certificate holders would have no requirement to examine the driving history records of its drivers and would likely hire or retain unqualified or unsafe drivers.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. Each certificate holder is required to provide the same information to the Transportation Cabinet and to perform the same type of safety checks. However, smaller operators will have much less paperwork to do than the larger operators.

#### TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Carriers (Amendment)

#### 601 KAR 1:140. U-drive-it permit application procedures.

RELATES TO: KRS 138.463, 281.600 through 281.670, 1998 Ky. Acts ch. 166 [Chapters 138, 186, 281]

STATUTORY AUTHORITY: KRS [138.463, 186.005,] 281.600, 1998 Ky. Acts ch. 166

NECESSITY, FUNCTION, AND CONFORMITY: KRS 281.600 through 281.670 require that a motor carrier obtain a permit or certificate of operating authority from the Transportation Cabinet prior to beginning or continuing operation as a motor carrier. Section 1 of 1998 Ky. Acts ch. 166 requires a motor vehicle dealer with a loaner vehicle for which he intends to pay the usage tax pursuant to KRS 138.463 to show the Transportation Cabinet that he is regularly engaged in the servicing or repair of motor vehicle and loans the loaner motor vehicle to a retail customer. [The Transportation Cabinet has the authority and responsibility to assess and collect the monthly U-drive-it usage tax and to qualify U-drive-it operators.] This administrative regulation sets out the procedures to be followed by an applicant for a U-drive-it permit or a motor vehicle dealer who applies for a U-drive-it permit in order to pay the usage tax on a loaner vehicle as set forth in KRS 138.463. [It also establishes procedures for obtaining a vehicle identification document and for the payment of the monthly usage tax.]

Section 1. (1) The application for a permit to engage in the business of U-drive-it as defined by KRS 281.014(4) or for the annual renewal of the permit shall be on Transportation Cabinet form TC 95-16, "Application for U-drive-it".

(2) A motor vehicle dealer who applies for a U-drive-it permit or annual permit renewal in order to pay usage tax on a loaner motor vehicle pursuant to KRS 138.463 shall provide the information required by Section 1(2) of 1998 Ky. Acts ch. 166 on Transportation Cabinet form TC 95-16-L, "Application for U-drive-it - Loaner".

(3) The application or renewal application fee established by KRS 281.620(2) [the form is prescribed and furnished by the Transportation Cabinet, Department of Vehicle Regulation, Division of Motor Carriers, and shall be accompanied by a filing fee of twenty-five (25) dollars.

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

Payments] made by check or money order shall be made payable to "Kentucky State Treasurer."

Section 2. An [(1) All initial applications for a U-drive-it permit shall be the subject of a hearing before the cabinet in accordance with the procedures established by administrative regulation 601 KAR 1:030:

(2) Applicants for a U-drive-it permit shall be required to meet the standards established by KRS 281.626. Prior to any application being docketed and noticed for hearing, the applicant shall submit to the Division of Motor Carriers evidence, which may include affidavits, attesting to the fact that the applicant is fit, willing and able to provide the requested service, and that the operation proposed by the applicant is one in which each transaction is arm's length and is based on a fair rental value of the vehicle. Upon determination by the division that the application is complete, the cabinet shall set the matter for hearing.

(3) The cabinet shall give a minimum of thirty (30) days written notice of each hearing to all required and interested parties. The notice shall state the time and place the hearing will be held, shall fully describe the matter to be heard, shall contain the name and address of the party initiating or involved in the matter to be heard, and shall contain the docket number assigned to the matter by the cabinet. The notice shall state that anyone having an interest in the matter may file a protest or other proper pleading in accordance with the requirements of the administrative regulations of the cabinet. Any application filed may in the discretion of the Commissioner of the Department of Vehicle Regulation be considered at a consolidated hearing or may be heard independently at a time set by the cabinet.

(4) All protests, pleadings, motions, and other papers shall be filed with the cabinet in duplicate and shall refer to the docket number assigned thereto by the cabinet, if any. All protests shall be filed no later than ten (10) days prior to the scheduled hearing. Pleadings, protests, motions or other papers filed by the parties represented by an attorney shall be signed by at least one (1) attorney of record in his individual name and shall state his address. Except when specifically provided otherwise, pleadings need not be verified or accompanied by an affidavit. The attorney's signature shall constitute the certification by him that he has read the matter; that to the best of his knowledge, information, and belief the statements contained therein are true; and that it is not interposed for delay. If the matter is not signed or is signed with the intent to defeat the purpose of this administrative regulation, it may be stricken as sham and false, and the matter may proceed as though there had been no filing. All protests shall state the statutory grounds of the protest and the reasons therefor. That which is not filed in conformance herewith will not be considered or accepted as a matter of record.

(5) Any] application which is protested or which is brought into question by the cabinet shall be set for a [separate] hearing pursuant to 601 KAR 1:030.

Section 3. Material Incorporated by Reference. (1) The following material is incorporated by reference in this administrative regulation:

(a) Transportation Cabinet form TC 95-16, "Application for U-drive-it", November 1993 edition; and

(b) Transportation Cabinet form TC 95-16-L, "Application for U-drive-it - Loaner" July 1998 edition.

(2) Copies of the material incorporated by reference may be inspected, copied, or obtained at the Division of Motor Carriers, Third Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622. The mailing address is Division of Motor Carriers, Qualification/Permit Branch, P.O. Box 2007, Frankfort, Kentucky 40602. The hours of operation are 8 a.m. to 4:30 p.m. on weekdays. The telephone number is (502) 564-4540.

ED LOGSDON, Commissioner  
JAMES C. CODELL, III, Secretary  
E. JEFFREY MOSLEY, Office of General Counsel

APPROVED BY AGENCY: July 14, 1998

FILED WITH LRC: July 14, 1998 at 4 p.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on August 24, 1998 at 1:30 p.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton and Holmes Streets, 4th Floor Hearing/Conference Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend

this meeting must in writing by August 17, 1998 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by August 17, 1998. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on August 24, 1998. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Charles Harman, Staff Assistant, Transportation Cabinet, State Office Building 10-13, 501 High Street, Frankfort, Kentucky 40622, (502) 564-7650, Fax: (502) 564-5238.

### REGULATORY IMPACT ANALYSIS

Contact person: Charles Harman

(1) Type and number of entities affected: There are currently 510 U-drive-it permit holders affected by this administrative regulation. It is estimated that 25% of these are also licensed motor vehicle dealers and therefore eligible for the new usage tax payment method allowed by HB 656. Further, as many as 75 additional motor vehicle dealers may apply to pay the usage tax on their loaner motor vehicles in accordance with HB 656.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The changes in this administrative regulation should have no impact on the cost of living or employment anywhere in the Commonwealth of Kentucky.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The changes in this administrative regulation should have no impact on the cost of doing business anywhere in the Commonwealth of Kentucky.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: All U-drive-it permit applicants are required to complete an application form and an annual renewal form. The motor vehicle dealers applying to pay their usage tax pursuant to the provisions of HB 656 will have to complete a separate form. Therefore, approximately 125 of the permit holders will be required to complete 2 application forms each year. However, participating in the loaner vehicle program is voluntary and therefore only the dealers who wish to participate are required to complete the application forms. Participation in the loaner program established by HB 656 should save the dealers money by allowing them to pay the usage tax on loaner vehicles at the lowest rate possible.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings

1. First year. The Transportation Cabinet will have to issue a separate U-drive-it permit for each of the motor vehicle dealers wishing to participate in the loaner motor vehicle usage tax program established by HB 656. Therefore, the cabinet will have to process an additional - 200 applications for permits each year.

2. Continuing costs or savings: The administrative cost relating to the U-drive-it program will increase significantly for the Transportation Cabinet.

3. Additional factors increasing or decreasing costs: There are no additional factors in this administrative regulation which will increase or decrease cost. However, HB 656 does provide a slight tax break to the motor vehicle dealers who participate. Therefore, there will be a slight reduction in the amount of usage tax collected.

(b) Reporting and paperwork requirements: With more permit holders, pursuant to 601 KAR 1:146, there will be more audits necessary.

(4) Assessment of anticipated effect on state and local reve-

nues: Assuming that all the motor vehicle dealers are paying the full amount of usage tax owed on their loaner vehicles, with the tax break in HB 656, there should be a slight decrease in road fund revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The road fund as appropriated to the Department of Vehicle Regulation and Financial Administration.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: The administrative regulation will have no economic impact in Kentucky. However, HB 656 is providing a slight tax break to the motor dealers who provide FREE OF CHARGE a loaner for their service or repair customers. Since the vehicles are earning the motor vehicle dealers nothing, but the vehicles are still being used on the highway, the General Assembly established this lower usage tax payment form for the loaner vehicles.

(b) Kentucky: Same

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Transportation Cabinet seriously considered not issuing a separate U-drive-it permit to the motor vehicle dealers who already have a U-drive-it permit. Under this scenario, the loaner vehicles would have been mixed with the vehicles that the dealer is either renting or leasing. Because the tax reporting form requires the dealer to report the revenue generated by the renting or leasing of a vehicle in the U-drive-it program, mixing the loaner vehicles which generate no revenue, would have skewed the tax reports. A skewed tax report immediately signals to the Transportation Cabinet the need for an audit of the company. In addition, most reprogramming of the computer system used in the U-drive-it program have been put on hold since a new program is being developed. Therefore, at least until the new computer program is ready, the cabinet found it easier to create a separate permit for each motor vehicle dealer participating in the loaner program rather than attempting to administer the program manually.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: Not applicable

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Yes. Tiering was used in the application process. The motor vehicle dealers who are participating in the loaner usage tax payment program do not have to provide proof of their business practices as do the U-drive-it permit holders who rent and lease vehicles.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. The motor vehicle registration office of the county clerk.

3. State the aspect or service of local government to which this administrative regulation relates. As an agent for the Transportation Cabinet, the county clerks register and title the motor vehicles based in Kentucky. This service is affected by this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There will be additional time required for the motor vehicle personnel in the office of each County Clerk in order to learn to distinguish between rental U-drive-it motor vehicles and loaner motor vehicles. However, this process is implemented in 601 KAR 1:145. This particular administrative regulation just provides the authority for the motor vehicle dealers to register the vehicles as loaners.

#### TRANSPORTATION CABINET Department of Vehicle Regulation Division of Motor Carriers (Amendment)

#### 601 KAR 1:145. Reporting and paying of usage tax pursuant to a U-drive-it permit.

RELATES TO: KRS 138.450 through 138.470, 154.690, 186.281, 281.626, 1998 Ky. Acts ch. 166 [Chapters 138, 154, 186, 281]

STATUTORY AUTHORITY: KRS 138.463, 186.281, 1998 Ky. Acts ch. 166 [186-005, 281-600]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 138.463 requires the Transportation Cabinet [has the authority and responsibility] to assess and collect the monthly U-drive-it usage tax. KRS 186.281(3) requires the holder of a U-drive-it permit to pay a fifteen (15) dollar annual seat tax for each U-drive-it passenger car. In this administrative regulation the cabinet establishes the procedure for submitting information on each motor vehicle in the program [obtaining a vehicle identification document] and for reporting and paying of the monthly usage tax and the annual seat tax.

Section 1. (1) A U-drive-it motor carrier who has been issued a permit pursuant to 601 KAR 1:140 shall provide information to the Transportation Cabinet identifying each motor vehicle to be operated under the provisions of the U-drive-it permit.

(2) Notification to the Transportation Cabinet with the vehicle identification information for a motor vehicle which is to be:

(a) Rented or leased shall be made on Transportation Cabinet form TC 95-53, "Application for U-drive-it Registration."

(b) Loaned as allowed in 1998 Ky. Acts ch. 166, Section 1 shall be made on Transportation Cabinet form TC 95-53-L, "Application for U-drive-it Registration Loaner."

(3) The U-drive-it permit holder on this application shall agree to pay the seat tax imposed by KRS 186.281(3) with the first month's usage tax on the motor vehicle pursuant to KRS 138.463.

(4) The vehicle identification information shall be submitted annually prior to the expiration of the motor vehicle's registration license plate.

(5) The first time a U-drive-it permit holder applies for a vehicle registration for a particular motor vehicle, he shall attach a copy of one of the following to either the "Application for U-drive-it Registration" or the "Application for U-drive-it Registration Loaner":

(a) The front and back of the manufacturer's certificate of origin; or

(b) The motor vehicle title.

(6) The U-drive-it permit holder shall submit the application form to the Department of Vehicle Regulation, Division of Motor Carriers. [Payment of all applicable seat taxes imposed by KRS 186.281 shall be due and payable to the department at the time of application for the vehicle identification document (fee receipt card). Seat taxes shall be applicable to cargo-carrying vehicles operated in Kentucky to the extent of the normal passenger-carrying capacity of the vehicle. At the time a U-drive-it permit holder pays to the department the annual seat tax imposed by KRS 186.281 he shall apply for a vehicle identification document for each vehicle to be operated under the U-drive-it permit in Kentucky. The application for a vehicle identification document shall be made to the Department of Vehicle Regulation, Division of Motor Carriers, on forms prescribed and furnished by the department. The application shall be accompanied by a vehicle equipment list which identifies each vehicle. For each vehicle listed for the first time on an equipment list, the applicant shall provide a copy of both front and



## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

back of either the manufacturer's certificate of origin, title or the registration of the vehicle. The vehicle identification document (fee receipt card) shall be renewed annually prior to the expiration of the vehicle's registration license plate.]

Section 2. (1) A vehicle shall not be used as a loaner vehicle or shall not [No vehicle may] be operated under a U-drive-it permit until the permit holder has:

(a) Agreed to pay [paid] the applicable seat tax imposed by KRS 186.281(3); and

(b) Supplied the [obtained a] vehicle registration information [identification document] for the vehicle.

(2) If [When] a vehicle ceases to be used as a loaner vehicle or operated under a U-drive-it permit, the permit holder shall apply to the jurisdictional county clerk for an amended registration form for the motor vehicle [advise the department in writing] within fifteen (15) days. [The notice shall include a complete description of the vehicle including its identification number.]

Section 3. (1) A [A photocopy of the vehicle identification document (fee receipt card) shall at all times, be carried in the vehicle for which it was issued and shall be subject to inspection by any proper representative of the Transportation Cabinet or other law enforcement agency. A copy of the vehicle identification document shall be presented to the county clerk upon the initial registration of any vehicle being registered under a U-drive-it permit. The vehicle identification document shall be used to assess the usage tax imposed by KRS Chapter 138:

Section 4. Any holder of a U-drive-it permit who reports and pays the tax imposed by KRS 138.463 shall report the tax on a monthly basis on Transportation Cabinet form TC 95-9, "Kentucky U-drive-it Monthly Usage Tax Return", or through an electronic equivalent of the form which has been preapproved by the Transportation Cabinet.

(2) The monthly tax report shall include the following for each motor vehicle identified as part of the program:

(a) The total amount of the lease or rental agreements for the month being reported;

(b) The amount of usage tax owed pursuant to KRS 138.463 for the month being reported; and

(c) On the first submittal for that registration period, the seat tax owed pursuant to KRS 186.281 for the entire registration period.

(3) The tax report and tax payment [the forms prescribed and furnished by the department. Tax reports and payments] shall be due on or before the end of the succeeding month following the period covered by the tax report.

(4)(a) The tax reported and paid to the cabinet for any rented or leased vehicle shall not be less than the equivalent to the amount due on the fair market value of a vehicle of like kind as set forth in 601 KAR 1:146, regardless of the terms of the rental or lease agreement.

(b) [However,] The tax reported and paid to the cabinet shall not be less than the amount due based on the actual terms of a rental or lease agreement.

(5) The tax reported and paid to the cabinet for a loaner vehicle shall be the same as the lease amount for the same vehicle as set forth in 601 KAR 1:146.

Section 4. (1) A [5. The U-drive-it permit holder who is eligible under KRS 138.463 to elect as to the payment of the usage tax shall make his election at the time of his application for his vehicle identification document (fee receipt card). No change in the method of payment of the usage tax shall be permitted during his term of ownership of the vehicle:

Section 5. Any holder of a U-drive-it permit with vehicles registered pursuant to an approved fleet registration allocation shall report and pay to the department the monthly usage tax at the rate imposed by KRS 138.463 on all vehicles rented from all its Kentucky locations regardless of the state of licensing of those vehicles.

(2) The U-drive it permit holder shall also license in Kentucky, pay the applicable seat tax imposed by KRS 186.281, and identify on Transportation Cabinet form TC 95-53 [obtain a vehicle identification document (fee receipt card) for] the number of vehicles at least equal to the number of vehicles to be registered in Kentucky by the ap-

proved allocation formula. [Tax payments not timely made shall be subject to penalties and interest.]

Section 6. (1) A [7. Any] U-drive-it permit holder who under the terms of KRS 154.690 claims exemption from the payment of usage taxes shall file annually with the Department of Vehicle Regulation a copy of his certificate from the Enterprise Zone Authority of Kentucky.

(2) If a U-drive-it permit holder obtains an exemption under KRS 154.690 at any time after his initial application for a U-drive-it permit, he shall [be required to] file a copy of the certification with the department prior to claiming the exemption from the payment of the usage tax.

(3)(a) If a [any] U-drive-it permit holder ceases to be certified under KRS 154.690, [then] he shall immediately [so] notify the department in writing.

(b) A [Any] U-drive-it permit holder who loses his certificate under KRS 154.690 and who is eligible under KRS 138.463 to elect as to the payment of the usage tax shall make this election at the time he notifies the department of his loss of certification.

Section 6. [8:] If a vehicle on which the usage tax is being paid pursuant to KRS 138.463 is transferred to another party under the conditions set forth in KRS 138.463(9)(e) [within 180 days of its registration and if less than 5,000 miles have been placed on the vehicle during its registration as a U-drive-it vehicle, then the new owner is required to pay the usage tax imposed by KRS 138.460 based on the taxable value of the vehicle as required by KRS 138.450(4)(e). In such a case], the U-drive-it permit holder shall not claim credit for any usage tax remitted for the vehicle.

Section 7. (1) A motor vehicle dealer paying the usage tax on a loaner vehicle pursuant to 1998 Ky. Acts ch. 166, Section 1 shall:

(a) Be subject to the audit provisions of 601 KAR 1:146;

(b) Maintain a log for each vehicle registered under that loaner permit number which includes the following:

1. Beginning and ending loan dates;

2. Customer name;

3. Beginning and ending odometer reading for each loan; and

4. Reference number to the repair authorization document on the customer's motor vehicle; and

5. Retain the repair authorization document associated with each loan.

(2) The log required in subsection (1)(b) of this section may be replaced with prenumbered loan agreement forms which contain the information required in that paragraph.

(3) The log, repair authorization document, and prenumbered loan agreement forms shall be retained for six (6) years.

Section 8. (1) The following material is incorporated by reference in this administrative regulation:

(a) Transportation Cabinet form TC 95-53, "Application for U-drive-it Registration", July 1998 edition;

(b) Transportation Cabinet form TC 95-20, "Kentucky U-drive-it Monthly Usage Tax Return", July 1998 edition; and

(c) Transportation Cabinet form TC 95-53-L, "Application for U-drive-it Registration Loaner", July 1998 edition.

(2) The material incorporated by reference may be viewed, copied, or obtained from the Transportation Cabinet, Department of Vehicle Regulation, Division of Motor Carriers, 501 High Street, Frankfort, Kentucky 40622. The telephone number is (502) 564-4540. The hours of operation are 8 a.m. through 4:30 p.m. eastern time on weekdays. [9. Tax records, and records of the payment thereof, shall be maintained by U-drive-it permit holders for a period as set forth in KRS 138.463(6), and shall be subject to audit or examination by proper representatives of the Transportation Cabinet.]

ED LOGSDON, Commissioner

JAMES C. CODELL, III, Secretary

E. JEFFREY MOSLEY, Office of General Counsel

APPROVED BY AGENCY: July 14, 1998

FILED WITH LRC: July 14, 1998 at 4 p.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on August 24, 1998 at 1:30 p.m. local prevailing time in the Transportation Cabinet, Corner of High, Clinton



and Holmes Streets, 4th Floor Hearing/Conference Room, 501 High Street, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by August 17, 1998 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by August 17, 1998. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. Written comments will be accepted until the close of business on August 24, 1998. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Charles Harman, Staff Assistant, Transportation Cabinet, State Office Building 10-13, 501 High Street, Frankfort, Kentucky 40622, (502) 564-7650, Fax: (502) 564-5238.

#### REGULATORY IMPACT ANALYSIS

Contact person: Charles Harman

(1) Type and number of entities affected: There are currently 510 U-drive-it permit holders. Under the provisions of HB 656, 601 KAR 1:140 and this administrative regulation an additional 200 permits will likely be issued for the motor vehicle dealers wishing to participate in the loaner usage tax payment program.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There should be no effect on the cost of living or employment anywhere in Kentucky as a result of the changes to this administrative regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There should be no effect on the cost of doing business as a result of this administrative regulation. However, HB 656 does provide a slight tax break to the motor vehicle dealers who participate in the loaner program.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: All U-drive-it permit holders are required to identify the motor vehicles being operated as rental or lease motor vehicles. The motor vehicle dealers applying to pay their usage tax pursuant to the provisions of HB 656 will have to separately identify their loaner vehicles. Therefore, approximately 125 of the permit holders will be required to complete 2 identification forms each year. However, participating in the loaner vehicle program is voluntary and therefore only the dealers who wish to participate are required to complete the application forms. Participation in the loaner program established by HB 656 should save the dealers money by allowing them to pay the usage tax on loaner vehicles at the lowest rate possible.

2. Second and subsequent years: Same

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings

1. First year: With more vehicles in the various portions of the U-drive-it program, the administrative cost of the Transportation Cabinet will increase.

2. Continuing costs or savings: Same

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: With more permit holders, pursuant to 601 KAR 1:146, there will be more audits necessary.

(4) Assessment of anticipated effect on state and local revenues: Assuming that all the motor vehicle dealers are paying the full amount of usage tax owed on their loaner vehicles, with the tax break in HB 656, there should be a slight decrease in road fund revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The road fund as appropriate

ated to the Department of Vehicle Regulation and Financial Administration.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: The administrative regulation will have no economic impact in Kentucky. However, HB 656 is providing a slight tax break to the motor dealers who provide FREE OF CHARGE a loaner for their service or repair customers. Since the vehicles are earning the motor vehicle dealers nothing, but the vehicles are still being used on the highway, the General Assembly established this lower usage tax payment form for the loaner vehicles.

(b) Kentucky: Same

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Transportation Cabinet seriously considered not issuing a separate U-drive-it permit to the motor vehicle dealers who already have a U-drive-it permit. Under this scenario, the loaner vehicles would have been mixed with the vehicles that the dealer is either renting or leasing. Because the tax reporting form requires the dealer to report the revenue generated by the renting or leasing of a vehicle in the U-drive-it program, mixing the loaner vehicles which generate no revenue, would have skewed the tax reports. A skewed tax report immediately signals to the Transportation Cabinet the need for an audit of the company. In addition, most reprogramming of the computer system used in the U-drive-it program have been put on hold since a new program is being developed. Therefore, at least until the new computer program is ready, the cabinet found it easier to create a separate permit for each motor vehicle dealer participating in the loaner program rather than attempting to administer the program manually.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: Not applicable

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? No. Tiering was not applied since all U-drive-it permit holders, regardless of the mechanism being used to pay the usage tax pursuant to KRS 138.463, must identify the vehicles and report the usage tax owed.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this administrative regulation will affect. The motor vehicle registration office of the county clerk.

3. State the aspect or service of local government to which this administrative regulation relates. As an agent for the Transportation Cabinet, the county clerks register and title the motor vehicles based in Kentucky. This service is affected by this administrative regulation.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: There will be additional time required for the motor vehicle personnel in the office of each County Clerk in order to learn to distinguish between rental U-drive-it motor vehicles and loaner motor vehicles.

TRANSPORTATION CABINET  
Department of Vehicle Regulation  
Division of Motor Carriers  
Department of Fiscal Management  
Division of Audit Review  
(Amendment)

601 KAR 9:135. Apportioned registration.

RELATES TO: KRS 186.020, 186.050, 186.051, 49 USC Chapter 317

STATUTORY AUTHORITY: KRS 186.050(13), 186.051(3)

NECESSITY, FUNCTION, AND CONFORMITY: 49 USC Chapter 317 requires each state to participate in the International Registration Plan. KRS 186.050(13) requires the Transportation Cabinet to promulgate administrative regulations concerning the registration of commercial motor vehicles under the Articles of the International Registration Plan. This administrative regulation sets forth the procedures to be followed in registering a commercial motor vehicle under the provisions of the International Registration Plan. It further clarifies when a vehicle licensed under the provisions of KRS 186.050(13) shall be deemed to be licensed under the provisions of other sections of KRS 186.050. The administrative regulation provides for the recordkeeping standards required for apportionable vehicles, auditing of the records by the Transportation Cabinet, and the appeal procedure when a disagreement occurs. There are no requirements in this administrative regulation which are more stringent than the federal mandate.

Section 1. Definitions. (1) "Apportionable vehicle" means any vehicle except recreational vehicles, vehicles displaying restricted plates, city pickup and delivery vehicles, and government owned vehicles, used or intended for use in two (2) or more jurisdictions that allocate or proportionally register vehicles and is used for the transportation of persons for hire or designed, used or maintained primarily for the transportation of property; and

(a) Is a power unit having a gross weight or registered gross weight in excess of 26,000 pounds; or

(b) Is a power unit having three (3) or more axles, regardless of weight; or

(c) Is used in combination and the weight of the combination exceeds 26,000 pounds gross vehicle weight.

(2) "Base jurisdiction" means the state where:

(a) The registrant has an established place of business;

(b) Mileage is accrued by the registrant's fleet; and

(c) Operational records of the fleet are maintained or can be made available for audit.

(3) "Established place of business" means a physical structure:

(a) Owned, leased, or rented by the fleet registrant;

(b) Designated by a street number or road location;

(c) Open during normal business hours;

(d) In which is located:

1. A telephone publicly listed in the name of the registrant;

2. A person conducting the fleet registrant's business; and

3. The operational records of the fleet or where the records are made available for audit.

(4) "Fleet" means one (1) or more apportionable vehicles;

(5) "International registration plan" or "IRP" means the interstate agreement on apportioning vehicle registration fees paid by motor carriers which was developed by the American Association of Motor Vehicle Administrators.

(6) "Jurisdiction" means a state, territory, or possession of the United States, the District of Columbia, or a state, province, or territory of a country.

(7) "Operational records" means source documents supporting miles traveled in each jurisdiction and total miles traveled such as fuel reports, trip sheets, and logs.

Section 2. Governing Material. (1) The "International Registration Plan, With Official Commentary" effective January 15, 1998 [February 14, 1997] and issued by the International Registration Plan, Inc. shall govern Kentucky's participation in IRP.

(2) The "Uniform Operation Audit Procedure Guidelines" effective March 1, 1993 and issued by the Audit Committee of the International Registration Plan, Inc. shall govern the recordkeeping requirements of

registrants and the Kentucky Transportation Cabinet's audit responsibilities under the IRP.

(3) The "Kentucky [1997] International Registration Plan, IRP, [Apportioned Registration] Policies and Procedures [Instructional] Manual" effective January 1, 1998 [1997] and issued by the Transportation Cabinet shall be followed by all operators or owners of apportionable vehicles whose base jurisdiction is Kentucky.

(4) The "International Registration Plan Policies and Procedures Manual" effective April 1994 shall be followed by the Kentucky Transportation Cabinet in administering the apportioned registration program.

Section 3. Application for Apportioned Registration. (1) The operator of an apportionable vehicle who operates in more than one (1) licensing jurisdiction shall apply for apportioned registration of his fleet in those jurisdictions in which he operates and which are members of the International Registration Plan unless he purchases a trip permit from a jurisdiction for each trip into the jurisdiction.

(2) Vehicles, or combinations of power unit and trailers, having a gross vehicle weight of 26,000 pounds or less and two (2) axle vehicles may be apportioned registered at the option of the registrant.

(3) If Kentucky is the base jurisdiction for an operator of an apportionable vehicle, he shall apply for his apportioned registration in Kentucky.

Section 4. Apportioned Mileage Reporting and Recordkeeping. (1)(a) The fleet miles required to be reported on the application for apportioned registration shall be the fleet miles traveled from July 1 through June 30 of the year immediately preceding the registration year.

(b) The mileage shall be distributed by jurisdiction. For each jurisdiction, whether or not a member of the International Registration Plan, all miles traveled in that jurisdiction by any apportioned power unit, whether the vehicle is empty or loaded, shall be reported.

(c) The mileage to be reported for any motor vehicle power unit which was added to or deleted from the apportioned fleet during the mileage reporting period shall be only those miles generated while it was part of the apportioned fleet.

(d) Mileage shall include the following:

1. Loaded and unladen trips;

2. Intrastate and interstate trips; and

3. Miles operated under trip permits.

(2) Apportioned registrants shall maintain operational records for the current registration year and the three (3) registration years immediately prior to the current year. The information shall be retained in an individual vehicle mileage record. The individual vehicle mileage record shall contain at a minimum the following information:

(a) Registrant's name and fleet number;

(b) Beginning and ending date of trip;

(c) Trip origin and destination;

(d) Route of travel for trip;

(e) Beginning and ending odometer or hubometer reading of each trip;

(f) Total trip miles and mileage;

(g) Mileage by jurisdiction for each trip;

(h) Vehicle unit number and vehicle identification number; and

(i) Driver's name or signature.

Section 5. Proof of Insurance and Certificate of Apportioned Registration. (1) The applicant shall apply to the appropriate county clerk for a certificate of apportioned registration for each vehicle in the fleet and any other vehicle to be apportioned registered.

(2) The county clerk's fee for the issuance of the certificate shall be two (2) dollars for each vehicle.

(3) The applicant shall submit proof of insurance to the county clerk at the time he applies for the certificate of apportioned registration.

Section 6. Registration Fees. (1)(a) The applicant shall submit the application for apportioned registration to the Department of Vehicle Regulation for approval. This submission may either be in person or by mail.

(b) Original and renewal application shall be made on Transportation Cabinet form TC 96-301, IRP Apportioned Registration, effective

October 1995.

(c) After the Department of Vehicle Regulation has approved an application, the department shall compute the apportioned registration fee due each jurisdiction under the International Registration Plan.

(d) The applicant shall be given a bill for registration in all jurisdictions which do not bill the applicant directly.

(e) The applicant shall return to the department, either in person or by mail, the bill and a certified check, cashier's check, personal check, business check, or money order made payable to the Kentucky State Treasurer.

(f) If the applicant is required to post a bond pursuant to 601 KAR 1:200 or has had a personal or business check returned for insufficient funds to the Transportation Cabinet by the applicant's bank, the Transportation Cabinet may require the applicant to make payment by cash, certified check, money order, or cashier's check.

(2) The required tax and fee shall be accompanied by proof of payment of the federal heavy vehicle use tax in accordance with the provisions of 601 KAR 9:115.

(3)(a) The Department of Vehicle Regulation shall issue an IRP apportioned license plate, and IRP cab card to the registrant for each vehicle registered under the provisions of the International Registration Plan.

(b) The originally issued IRP license plate shall have decals, indicating the expiration month and year.

(c) After renewal each year, the registrant shall be issued a new decal designating the year of expiration and a new IRP cab card.

(d) The IRP cab card shall list those jurisdictions to which the registrant has apportioned his registration fees and any other information required by the International Registration Plan.

(e) The original IRP cab card shall be carried in the cab of the vehicle at all times.

Section 7. Supplemental Applications. (1) If an applicant need to add to or delete vehicles from its fleet, the department shall be notified on a supplemental application form TC 95 [96]-303, "Supplemental Kentucky Application for IRP Apportioned Registration" effective January 1998 [~~October 1995~~]. This form shall be used to provide notice of the following:

- (a) A vehicle addition;
- (b) A vehicle deletion;
- (c) A vehicle transfer; or
- (d) A gross weight increase.

(2)(a) A vehicle deletion shall be accompanied by the apportioned registration plate and the certificate of apportioned registration.

(b) The registrant may, at the end of the registration month, apply for a refund of the taxes which apply to the unexpired months of the registration year.

(3)(a) If a vehicle is being added by a registrant at the same time he is deleting another vehicle with the same weight within the fleet, the Kentucky registration tax may be transferred from the deleted to the added vehicle.

(b) The Kentucky transfer fee shall be two (2) dollars.

(c) The registrant shall be notified of the transfer fee owed to other jurisdictions.

(4) If the declared gross weight of the vehicle is to be increased, the increased tax owed shall be prorated from the date the increased weight is allowed.

Section 8. Adding Jurisdictions to IRP Registrations. (1) If the operation of a registrant is being expanded to include an additional jurisdiction which participates in the International Registration Plan, the registrant may amend his mileage schedule to reflect an estimate of miles to be operated in the new jurisdiction.

(2) The mileage percentages for an added jurisdiction shall be computed as added on to the actual mileages earlier reported.

(3) Percentages approved on the original application shall not be changed during the registration year.

(4)(a) If an additional jurisdiction is added during the registration year, all vehicles in the fleet shall be changed to reflect operation in the additional jurisdiction.

(b) The Department of Vehicle Regulation shall send replacement IRP cab cards to the registrant.

(c) Upon receipt of the new cab cards the registrant shall return the outdated IRP cab cards to the department.

Section 9. Conversion to Apportioned Registration. (1) If a vehicle is registered in Kentucky as a commercial or limited activity vehicle and the registrant intends to convert to an apportioned registration, the registrant shall first purchase an apportioned registration from the appropriate county clerk.

(2) The current commercial or limited activity license plate shall be submitted to the Department of Vehicle Regulation with the application for apportioned registration.

(3)(a) The applicant shall be given credit for the remainder of the value of his current Kentucky registration.

(b) This credit shall be applied toward taxes or fees due other IRP jurisdictions and collected by Kentucky on the apportioned registration.

(4) All taxes and fees due other jurisdictions and any additional taxes or fee due to Kentucky shall be paid in accordance with Section 5 of this administrative regulation before the apportioned credentials may be issued.

Section 10. Replacement of Credentials. (1) If the owner of a vehicle registered pursuant to KRS 186.050(13) loses his copy of a certificate of apportioned registration, he may obtain a duplicate from the Department of Vehicle Regulation by:

(a) Filing an affidavit upon form TC 96-167, Affidavit for Replacement County/Affidavit for Nonexchange - County" furnished by the department; and

(b) Paying to the department a fee of two (2) dollars.

(2)(a) If the owner loses a registration plate issued him under the provisions of KRS 186.050(13), he shall report the plate as lost or stolen to his area state police post or local law enforcement agency.

(b) The enforcement agency shall report the loss in the nationwide computer system for the information of all enforcement agencies.

(3) The owner of a lost registration plate shall file with the Department of Regulation the following:

- (a) A form TC 96-167;
- (b) An affidavit for replacement;
- (c) His certificate of apportioned registration; and
- (d) A three (3) dollar fee.

(4) The Department of Vehicle Regulation after review and acceptance of the completed forms shall issue the owner another certificate of apportioned registration and a plate which shall bear a different number from that of the lost plate. The original copy of the surrendered certificate of apportioned registration shall be maintained by the department.

(5) The department shall forthwith cancel the registration corresponding to the number of the lost plate, and the cancellation shall be reported by the department to the Commissioner of the Department of State Police.

(6) Any person finding a lost registration plate shall deliver it to the Department of Vehicle Regulation or to any county clerk for forwarding it to the department.

Section 11. Apportioned Registration of Leased Vehicles. Apportioned registration of leased vehicles may be accomplished in one (1) of the following ways:

(1) The owner/lessor may be the registrant and the vehicle may be registered in the name of the owner/lessor. The allocation of registration fees shall be based on the operational records of the owner/lessor. The apportioned license plate and IRP cab card shall be the property of the lessor; or

(2) The lessee may be the registrant and the vehicle may be registered by the lessee in both the owner/lessor's name and that of the lessee. The allocation of registration fees shall be based on the operational records of the lessee. The apportioned license plate and IRP cab card shall be the property of the lessee.

Section 12. Apportioned Registration of Trailers. (1) Under the International Registration Plan, trailers, semitrailers, and auxiliary axles are not required to be apportioned registered. However, a member jurisdiction may file an exception to the IRP. Kentucky registrants are only required to pay trailer registration taxes and fees to Kentucky and to those member jurisdictions which have filed an exception.

(2) Kentucky trailer credentials shall be obtained through the appropriate county clerk.

(3) If a Kentucky trailer registration is purchased, the registrant shall submit to the Department of Vehicle Regulation a list of all trailers

apportioned registered.

(4) The fee for each IRP trailer cab card shall be two (2) dollars.

(5) After receiving the list of trailers and appropriate tax and fee, the department shall send the registrant the IRP cab cards.

(6) In order to receive the IRP cab card by the beginning date of the registrant's assigned registration year, the registrant shall submit the list at least one (1) month in advance of the beginning date.

Section 13. Registration Equivalent. Registration of a motor vehicle under the provisions of KRS 186.050(13) and this administrative regulation shall be equivalent to registration of the motor vehicle under the provisions of KRS 186.050(3). All privileges afforded a motor vehicle in Kentucky when operating on KRS 186.050(3) registration shall be afforded a motor vehicle in Kentucky when operating on KRS 186.050(13) registration.

Section 14. Audit of Apportioned Registrants. (1) In accordance with the provisions of the International Registration Plan, the Transportation Cabinet, Division of Audit Review shall every five (5) years audit fifteen (15) percent of the apportioned registrants based in Kentucky.

(2) An audit shall be performed in accordance with the "Uniform Operational Audit Procedure Guidelines".

(3) The Division of Audit Review shall in writing notify the apportioned registrant of the date, time, and location of the audit. At least thirty (30) days' advance notice shall be given to the registrant.

(4) Failure of the registrant to make available records required to be kept by the registrant pursuant to Section 4 of this administrative regulation and requested for the audit may result in a penalty assessment of up to 100 percent of Kentucky's registration fees set forth in KRS 186.050 in addition to fees for all other apportioned jurisdictions included in the original application or cancellation of apportioned registration.

(5) If it is determined that the registrant's operational records are not located in Kentucky and it is necessary for the Transportation Cabinet's auditors to travel to where the records are maintained, the registrant shall pay the Transportation Cabinet for the travel expenses incurred by its auditors in accordance with the per diem and travel rates established in 200 KAR 2:006.

(6) If the audit is being conducted on site, the auditor shall conduct and document a preaudit conference with the registrant outlining the operation, audit procedures, records to be examined, sample period, and sampling procedures. The motor carrier and auditor shall determine at the preaudit conference who has the responsibility for the final acceptance of audit findings and who should be involved in the close-out conference.

(7) If the audit is being conducted on site, the auditor shall conduct and document a close-out conference with the registrant outlining preliminary findings to include applicable penalty and interest, recommendations, rights of appeal, and to whom the audit report should be addressed.

(8) The Transportation Cabinet shall furnish the registrant a letter of audit findings and recap schedules. If requested, the cabinet shall supply any other work papers to the registrant.

(9) If an audit indicates that additional tax is owed, the Transportation Cabinet shall issue an audit supplemental tax statement.

(10) The registrant shall within forty-five (45) days of the date of the audit supplemental tax statement pay the supplemental tax or protest in writing to the Transportation Cabinet, Division of Audit Review.

Section 15. Protest or Appeal of Audit Results. (1) The registrant may within forty-five (45) days of the date of the audit findings, protest in writing to the Transportation Cabinet, Division of Audit Review any portion of the audit.

(2) If the registrant does not protest, the audit or the audit supplemental tax statement shall be final on the beginning of the 46th day.

(3)(a) If a registrant protests pursuant to this section, the protest shall include a supporting statement and documents which identify the specific adjustments requested or the portions of the audit being protested, and setting forth the reasons the protest is being made.

(b) If the supporting statement and documents are sufficient to cause the Transportation Cabinet to change the audit or audit supplemental tax statement, the registrant shall be notified of the change

to the [and the amended] audit or [amended audit supplemental] tax statement [shall become final].

(c) If the supporting statement and documents are not sufficient to cause the Transportation Cabinet to change the audit or audit supplemental tax statement exactly as requested by the registrant in its protest, the registrant shall be notified to attend an information gathering/protest conference with the Division of Audit Review. The information gathering/protest conference shall be scheduled to be held within thirty (30) days of the issuance of the written protest. It may be rescheduled twice [only one (1) time] by either party.

(d) Within twenty (20) days of the information gathering/protest conference the Transportation Cabinet shall issue the final ruling [audit or final audit supplemental tax statement].

(4) If the registrant desires, he may, within thirty (30) days of the date of the final audit or final audit supplemental tax statement appeal to the Kentucky Board of Tax Appeals pursuant to KRS 131.340.

Section 16. Protest or Appeal of Nonaudit IRP Issue. (1) If anyone is aggrieved by any action or decision of the Transportation Cabinet made pursuant to the provisions of this administrative regulation except the audit provisions set forth in Sections 14 and 15 of this administrative regulation, within ten (10) days of the decision, may protest to the Transportation Cabinet, Division of Motor Carriers [Vehicle Licensing].

(2)(a) If a protest is made pursuant to this section, the protest shall include a supporting statement and documents which identify the specific adjustments requested or the action of the Transportation Cabinet being protested, and setting forth the reasons the protest is being made.

(b) If the supporting statement and documents are sufficient to cause the Transportation Cabinet to change its action or decision, the protestant shall be notified of the change.

(c) If the supporting statement and documents are not sufficient to cause the Transportation Cabinet to change its action or decision as requested by the protestant, the protestant shall be notified to attend an information gathering/protest conference with the Division of Motor Carriers [Vehicle Licensing]. The information gathering/protest conference shall be scheduled to be held within thirty (30) days of the issuance of the written protest. It may be rescheduled only one (1) time by either party.

(d) Within twenty (20) days of the information gathering/protest conference the Transportation Cabinet shall issue a final decision.

(3)(a) An appeal of any nontax action of the Transportation Cabinet resulting from its actions relating to this administrative regulation shall be in writing and directed to the Transportation Cabinet, Office of General Counsel, 10th Floor, State Office Building, 501 High Street, Frankfort, Kentucky 40622.

(b) An administrative hearing shall be conducted in accordance with the provisions of KRS Chapter 13B.

(4) If a protestant desires, he may, within thirty (30) days of the date of the final decision of the Transportation Cabinet appeal a tax issue to the Kentucky Board of Tax Appeals pursuant to KRS 131.340.

Section 17. Material Incorporated by Reference. (1) The following items are incorporated by reference as a part of this administrative regulation:

(a) Transportation Cabinet form TC 96-301, "IRP Apportioned Registration", effective October 1995;

(b) Transportation Cabinet form TC 95 [96]-303, "Supplemental Kentucky Application for IRP Apportioned Registration" effective January 1998 [October 1995];

(c) Transportation Cabinet form TC 96-167, "Affidavit for Replacement-County/Affidavit for Nonexchange-County" effective April 1992;

(d) "Kentucky [1997] International Registration Plan, IRP, [Apportioned Registration] Policies and Procedures [Instructional] Manual" effective January 1, 1998 [1997] and issued by the Kentucky Transportation Cabinet;

(e) "Uniform Operational Audit Procedure Guidelines" effective March 1, 1993 and issued by the Audit Committee of the International Registration Plan, Inc.;

(f) "International Registration Plan, With Official Commentary" effective January 15, 1998 [February 14, 1997] and issued by the International Registration Plan, Inc.; and

(g) "International Registration Plan Policies and Procedures Man-

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

ual" effective April 1994.

(2) The material incorporated by reference in subsection (1)(a), (b), (c), (d), (f) and (g) of this section may be viewed, copied, or obtained from the Department of Vehicle Regulation, Division of Motor Carriers. The address is 501 High Street, Second Floor, State Office Building, Frankfort, Kentucky 40622. The telephone number is (502) 564-5301. The hours of operation are weekdays from 8 a.m. through 4:30 p.m. local prevailing time.

(3) The material incorporated by reference in subsection (1)(e) and (f) of this section may be viewed, copied, or obtained from the Department of Fiscal Management, Division of Audit Review. The address is 641 Teton Trail, Frankfort, Kentucky 40622. The telephone number is (502) 564-6760. The hours of operation are weekdays from 8 a.m. through 4:30 p.m. local prevailing time.

ED LOGSDON, Commissioner

GLENN MITCHELL, Commissioner

JAMES C. CODELL, III, Secretary

E. JEFFREY MOSLEY, Office of General Counsel

APPROVED BY AGENCY: June 15, 1998

FILED WITH LRC: June 18, 1998 at 1 p.m.

PUBLIC HEARING: A public comment hearing on this administrative regulation will be held on August 24, 1998 at 10 a.m. local prevailing time in the Transportation Cabinet, 10th Floor General Counsel Conference Room, 501 High Street, State Office Building, Corner of High, Clinton and Holmes Streets, Frankfort, Kentucky 40622. Any person who intends to attend this meeting must in writing by August 17, 1998 so notify this agency. If no notification of intent to attend the hearing is received by this date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given the opportunity to comment on the administrative regulation. A transcript of the public comment hearing will not be made unless a written request for a transcript is made and then only at the requestor's expense. If you have a disability for which the Transportation Cabinet needs to provide accommodations, please notify us of your requirements by August 17, 1998. This request does not have to be in writing. If you do not wish to attend the public hearing, you may submit written comments on the administrative regulation. If the hearing is held, written comments will be accepted until the close of the hearing. If the hearing is canceled written comments will be accepted until the close of business on August 17, 1998. Send written notification of intent to attend the public comment hearing or written comments on the administrative regulation to: Sandra Pullen Davis, Staff Assistant, Transportation Cabinet, Office of General Counsel, 501 High Street, Frankfort, Kentucky 40622, (502) 564-7650, Fax: (502) 564-5238.

### REGULATORY IMPACT ANALYSIS

Contact person: Sandra Pullen Davis, Staff Assistant

(1) Type and number of entities affected: All owners of vehicles with a gross weight above 26,000 pounds and which are to be operated in interstate commerce.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: A public comment hearing was not held. However, no effect on the cost of living or employment are anticipated.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: A public comment hearing was not held. However, no effect on the cost of living or employment are anticipated.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Allowing personal or business checks to be submitted for payment of the registration fees instead of requiring a secured payment, will eliminate one step in the renewal process for most commercial vehicle owners.

2. Second and subsequent years: Same as above.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: The changes in the procedures manual allowing for staggered apportioned registration

will spread the workload of the Apportion Registration Section of the Division of Motor Vehicle Licensing over several months of the year instead of concentrating most of the work in 6 weeks. Allowing personal and business checks to be submitted for payment of registration fees will increase the paperwork for the Transportation Cabinet. The cabinet will have to track down the sender of each check for which there is insufficient funds and attempt to obtain payment. In addition, a data base of the persons from whom the cabinet will not accept unsecured checks will have to be maintained. The largest cost, however, will likely be having to pay other states their share of the registration fees even though a particular check has bounced.

1. First year: Until we know how many checks are bounced each year, we will not have a good idea of how much it will cost the Transportation Cabinet to deal with these.

2. Continuing costs or savings: Same as above.

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The Transportation Cabinet will implement the administrative regulation with road funds allocated for the motor vehicle licensing function of the Department of Vehicle Regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: A public comment hearing was not held. However, no economic impacts are anticipated.

(b) Kentucky: A public comment hearing was not held. However, no economic impacts are anticipated.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The Transportation Cabinet is required by federal law to participate in the International Registration Plan. Therefore, the changes adopted by that organization must also be adopted in Kentucky. The Transportation Cabinet decided to begin accepting unsecured checks to make registration renewal easier for the trucking companies based in Kentucky. If there are a significant number of bounced checks, the cabinet will reverse this policy decision.

(8) Assessment of expected benefits: Greater ease of dealing with Kentucky state government.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: 601 KAR 2:010 also forbids the Transportation Cabinet accepting unsecured checks for apportioned registration purposes.

(a) Necessity of proposed regulation if in conflict: The Transportation Cabinet has filed a notice of intent to amend 601 KAR 2:010 to negate the conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Yes, the Transportation Cabinet will also amend 601 KAR 2:010 for consistency.

(10) Any additional information or comments: Senate Bill 141 passed by the 1998 General Assembly amended KRS 186.020 and 186.051 to mandate a staggered registration program for commercial vehicles. While the Transportation Cabinet had believed that it already had sufficient authority to stagger the registration renewals, the enactment of this bill leaves no misunderstanding.

(11) TIERING: Is tiering applied? No. Explain: All vehicles subject to the provisions of the International Registration Plan must follow those provisions when being registered.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? Yes

2. State what unit, part or division of local government this ad-

ministrative regulation will affect. County clerks' offices.

3. State the aspect or service of local government to which this administrative regulation relates. Issuance of apportioned registration plates.

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is in effect. If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): 0

Expenditures (+/-): 0

Other Explanation: The county clerks offices, like the Department of Vehicle Regulation will experience administrative relief with the spreading out of the registration period of the apportioned vehicles.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate.  
49 USC Chapter 317

2. State compliance standards. Kentucky was one of the first states to join the International Registration Plan and issues its apportioned registrations in compliance with the provisions of the Articles of Incorporation of IRP. Further, Kentucky collects and processes the registration tax for other jurisdictions as required by IRP.

3. Minimum or uniform standards contained in the federal mandate. The federal mandate requires each state to participate in the International Registration Plan. The IRP requires each state to issue apportioned registration plates to all vehicles with a gross weight above 26,000 pounds which are to be operated in interstate commerce. It further requires each state to collect the proportional registration fees for each state in which the apportioned vehicle will be operated.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. Not applicable

#### EDUCATION, ARTS, AND HUMANITIES CABINET Education Professional Standards Board (Amendment)

704 KAR 20:305. Written examination prerequisites for teacher certification.

RELATES TO: KRS 161.028(1)(a), (k), 161.030(3), (4)

STATUTORY AUTHORITY: KRS 161.028(1)(a), (k), 161.030(3), (4)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 161.030(3) requires that a new teacher, including an out-of-state teacher with less than two (2) years experience, successfully complete appropriate assessments prior to initial certification in Kentucky. KRS 161.030(3) and (4) require the Education Professional Standards Board to select the tests, determine the passing scores, establish a reasonable fee for the assessments, and establish a procedure for a person to repeat a test and be informed of his strengths and weaknesses in each area. This administrative regulation establishes the written examination prerequisites for teacher certification, including the required tests, the minimum acceptable level of achievement on each test, the fee for each test, and the procedure for retaking the test.

Section 1. A teacher applicant for certification shall successfully complete the appropriate written tests identified in this administrative regulation prior to initial Kentucky certification. A score on a test completed more than five (5) years prior to application for certification shall not be acceptable.

Section 2. ~~The following NTE Core Battery Tests and passing scores shall be required of each new teacher applicant and an out-of-state applicant with less than two (2) years of teaching experience as defined in 704 KAR 20:045:~~

~~(1) Communication skills - 646;~~

~~(2) General knowledge - 643;~~

~~(3) Professional knowledge - 644.~~

~~Section 3. Specialty tests and passing scores shall be required of each new teacher applicant and a teacher seeking an additional certificate as identified in this section.~~

~~(1) An applicant for interdisciplinary early childhood education, birth to primary, certification shall take an Education Professional Standards Board test for interdisciplinary early childhood, with a passing score of 150.~~

~~(2) An applicant for elementary certification shall take [the NTE Early Childhood Education Test (10020) with a passing score of 480 through September 30, 1997. After this date, an applicant for elementary certification shall take] Elementary Education: Curriculum and Instruction (10011) with a passing score of 143.~~

~~(3) An applicant for middle school certification shall take Education in the Elementary School Test (20010) with a passing score of 510 through September 30, 1998. After this date, applicants shall take two (2) middle school specialty tests with no passing scores based on the applicant's specialty as identified in this subsection:~~

~~(a) Middle School Mathematics (0069) - no passing score;~~

~~(b) Middle School Science (0439) - no passing score;~~

~~(c) Middle School English (0049) - no passing score;~~

~~(d) Middle School Social Studies (0089) - no passing score.~~

~~(4) An applicant for certification for teacher of exceptional children in communication disorders, learning behavior disorders, and moderate and severe disabilities [(except for communication disorders) shall take the Special Education Test (10350) with a passing score of 500 through September 30, 1997. After this date, an applicant for certification for teacher of exceptional children] shall take each specialty test based on the applicant's specialty with the corresponding passing score as identified in this subsection:~~

~~(a) Communication disorders:~~

~~1. Application for Core Principal Across Categories of Disabilities (10352) - 127; and~~

~~2. Speech Language Pathology (10330) - 450;~~

~~(b) Learning behavior disorder:~~

~~1. Application of Core Principles Across Categories of Disabilities (10352) - 127; and~~

~~2. Teaching Student with Behavioral Disorders/Emotional Disturbances (20371) - 147;~~

~~(c) Moderate and severe disabilities:~~

~~1. Application of Core Principles Across Categories of Disabilities (10352) - 127; and~~

~~2. Teaching Students with Mental Retardation (20321) - 139;~~

~~(d) Hearing impaired: Special Education Test (10350) - 500;~~

~~(e) Visually impaired: Special Education Test (10350) - 500.~~

~~(5) An applicant for certification for teacher of exceptional children with hearing disorders and visual disorders shall take Special Education test (10350) with a passing score of 500 through September 30, 1998. After this date, an applicant shall take specialty tests based on the applicant's specialty with a corresponding passing score as identified in this subsection:~~

~~(a) Hearing impaired:~~

~~1. Application for Core Principal Across Categories of Disabilities (10352) - 127; and~~

~~2. Education of Deaf and Hard of Hearing Students (0271) - 156;~~

~~(b) Visually impaired:~~

~~1. Application for Core Principal Across Categories of Disabilities (10352) - 127 and,~~

~~2. Teaching Students with Visual Impairments (0280) - no passing score.~~

~~(6) An applicant for certification at the secondary level shall take each specialty test corresponding to the teaching area or major with the passing score identified in this subsection. An applicant whose teaching specialty is in a major for which no appropriate specialty test is available shall take the specialty test corresponding to the minor teaching specialty.~~

~~(a) Biology:~~

~~1. Biology: Content Knowledge Part 1 (20231) - 139; and~~

~~2. Biology: Content Essays (30233) - 139 [no passing score];~~

~~(b) Chemistry:~~

~~1. General Science: Content Knowledge Part 2 (10432) - 150; and~~

~~2. Either:~~



# VOLUME 25, NUMBER 2 – AUGUST 1, 1998

- a. Chemistry: Content Knowledge (20241) - 144; or
- b. Physics: Content Knowledge (10261) - 141;
- (c) Dramatics:
  - 1. English Language and Literature: Content Knowledge (10041) - 138; and
  - 2. English Language, Literature and Composition Essays (20042) - 135 [no passing score];
- (d) Dramatics-speech:
  - 1. English Language and Literature: Content Knowledge (10041) - 138; and
  - 2. English Language, Literature and Composition Essays (20042) - 135 [no passing score];
- (e) English:
  - 1. English Language and Literature: Content Knowledge (10041) - 138; and
  - 2. English Language, Literature and Composition Essays (20042) - 135 [no passing score];
- (f) History:
  - 1. Social Studies: Content Knowledge (10081) - 146; and
  - 2. Social Studies: Interpretation of Materials (20083) - 150 [no passing score];
- (g) History - political science:
  - 1. Social Studies: Content Knowledge (10081) - 146; and
  - 2. Social Studies: Interpretation of Materials (20083) - 150 [no passing score];
- (h) Mathematics:
  - 1. Mathematics: Content Knowledge (10061) - 141; and
  - 2. Mathematics: Proofs, Models, and Problems (20063) - 141 [no passing score];
- (i) Mathematics - physical science: select from either:
  - 1. Mathematics Test (10060) 500; or
  - 2. Chemistry, Physics, and General Science Test (10070) - 510;
- (j) Physics:
  - 1. General Science: Content Knowledge, Part 2 (10432) - 150; and
- and
- 2. Either:
  - a. Chemistry: Content Knowledge (20241) - 144; or
  - b. Physics: Content Knowledge (10261) - 141;
- (k) Physical science:
  - 1. General Science: Content Knowledge Part 2 (10432) - 150; and
  - 2. Either:
    - a. Chemistry: Content Knowledge (20241) - 144; or
    - b. Physics: Content Knowledge (10261) - 141;
- (l) Political science:
  - 1. Social Studies: Content Knowledge (10081) - 146; and
  - 2. Social Studies: Interpretation of Materials (20083) - 150 [no passing score];
- (m) Science: select from either:
  - 1. Biology and General Science Test (10030) - 550; or
  - 2. Chemistry, Physics and General Science Test (10070) - 510;
- (n) Speech:
  - 1. English Language and Literature: Content Knowledge (10041) - 138; and
  - 2. English Language, Literature and Composition Essays (20042) - no passing score.
- ~~[(6) Effective October 1, 1997, a test designated with no passing score in subsection (5) of this section shall have the following passing scores:~~
  - ~~(a) English Language, Literature, and Composition: Essays (20042) with a passing score of 135;~~
  - ~~(b) Biology: Content Essays (30233) with a passing score of 139;~~
  - ~~(c) Mathematics Proofs, Models and Problems, Part I (20063) with a passing score of 141;~~
  - ~~(d) Social Studies: Interpretation of Materials (20083) with a passing score of 150.~~
- ~~(7) An applicant for certification in all grades shall take the specialty test or tests with the passing score as identified in this subsection:~~
  - ~~(a) Art - Art Education Test (10130) - 510;~~
  - ~~(b) French - French (10170) - 510;~~
  - ~~(c) German - German (20180) - 490;~~
  - ~~(d) Health - Educational Professional Standards Board Test for Health Education - 67;~~
  - ~~(e) Music (Vocal and Instrumental) - Music Education (10110) -~~

510;

- ~~(f) Physical education:~~
  - ~~1. Physical Education: Content Knowledge (10091) - 152; and~~
  - ~~2. Physical Education: Movement Forms Analysis and Design (30092) - no passing score;~~
- ~~(g) Spanish:~~
  - ~~1. Spanish Content Knowledge (10191) - 145; and~~
  - ~~2. Spanish: Productive Language Skills (20192) - no passing score;~~
- ~~(h) School Media Librarian: Library Media Specialist (10310) - 590;~~
- ~~(7) [(8) Effective October 1, 1997,] An applicant for certification in all grades in the following specialty areas shall take the specialty test or tests with the passing score as identified in this subsection.~~
  - ~~(a) Art:~~
    - ~~1. Content Knowledge (10133) - 139; and~~
    - ~~2. Art Making (20131) - no passing score;~~
  - ~~(b) French:~~
    - ~~1. French: Content Knowledge (10173) - 144; and~~
    - ~~2. French: Productive Language Skills (20171) - no passing score;~~
  - ~~(c) German: German: Content Knowledge (20181) - 143;~~
  - ~~(d) Health: Health Education (10550) - 550;~~
  - ~~(e) Latin: Latin (0600) - 530;~~
  - ~~(f) Music:~~
    - ~~1. Music: Content Knowledge (10113) - 137; and~~
    - ~~2. Music: Concepts and Processes (30111) - no passing score.~~
  - ~~(g) Physical education:~~
    - ~~1. Physical education: Content Knowledge (10091) - 152; and~~
    - ~~2. Physical education: Movement Forms Analysis and Design (30092) - 135;~~
  - ~~(h) Spanish:~~
    - ~~1. Spanish Content Knowledge (10191) - 145; and~~
    - ~~2. Spanish: Productive Language Skills (20192) - 156;~~
  - ~~(i) School media librarian: Library Media Specialists (10310) - 590.~~
  - ~~(8) Effective October 1, 1998 tests designated with no passing scores in subsection (7) of this section shall have the following passing scores:~~
    - ~~(a) Art Making (20131) - 154;~~
    - ~~(b) French: Productive Language Skills (20171) - 151;~~
    - ~~(c) Music: Concepts and Processes (30111) - 140.~~
  - ~~(9) [Effective October 1, 1997 tests designated with no passing scores in subsection (7) of this section shall have the following passing scores:~~
    - ~~(a) Physical Education: Movement Forms Analysis and Design (30092) - 135;~~
    - ~~(b) Spanish: Productive Language Skills (20192) - 156.~~
  - ~~(10) An applicant for certification to teach in grades five (5) through twelve (12) with one (1) or more of the following specializations shall take the specialty tests with the passing scores as identified in this subsection:~~
    - ~~(a) Agriculture: Agriculture (10700) - 530;~~
    - ~~(b) Business and Marketing Education - Business Education (10100) - 570 [540];~~
    - ~~(c) Comprehensive Business - Business Education (10100) - 570 [540];~~
    - ~~(d) Distributive Education - Business Education - 570 [540];~~
    - ~~(e) Family and Consumer Sciences - Home Economics Education (10120) - 540;~~
    - ~~(f) Industrial Education - Technology Education (10050) - 570 [550].~~
  - ~~(10) An applicant who holds one (1) of the certificates listed in this section may qualify for additional certification in English as a second language by completing Teaching English as a Second Language (0360) - 550.~~
  - ~~(11) Specialty tests for an applicant who successfully completes a new test identified in subsections (3)(a) through (d), (5)(a) and (b), (7), and (10) of this section prior to October 1, 1998, shall be accepted for the issuance of the corresponding certification. Specialty tests required prior to October 1, 1998, shall be accepted for the issuance of the corresponding certification for a teacher applicant who successfully completed the tests prior to this date and apply for certification no later than September 30, 1999. [Effective October 1, 1997, an applicant for certification to teach in grades five (5) through twelve (12) with one (1) or more of the following specializations shall take the specialty~~

test with passing score as identified in this subsection:

(a) ~~Business and Marketing Education – Business Education (10100) – 570;~~

(b) ~~Comprehensive Business – Business Education (10100) – 570;~~

(c) ~~Distributive Education – Business Education (10100) – 570;~~

(d) ~~Industrial Education – Technology Education (10050) – 570.~~

(12)(a) If an applicant successfully completes a test identified in subsections (2), (4), (6), (8), (9), or (11) of this section prior to October 1, 1997, the specialty test shall be accepted for the issuance of the corresponding certification.

(b) A specialty test required prior to October 1, 1997, shall be accepted for the issuance of the corresponding certification for a teacher applicant who:

1. Has successfully completed the test prior to that date; and
2. Applies for certification by September 30, 1998.]

Section 3. [4.] (1) An applicant for initial certification may take the NTE Core Battery Tests and Praxix II: Subject Assessments and Specialty Area Tests on a date established by the Educational Testing Service for national administration or on a date established by the Education Professional Standards Board for special administration.

(2) An applicant shall authorize test results to be forwarded by the Educational Testing Service to the Kentucky Department of Education and to the appropriate teacher preparation institution.

(3) Public announcement of testing dates and locations shall be issued sufficiently in advance of testing dates to permit advance registration as required by the Educational Testing Service. An applicant shall seek information regarding the dates and location of the tests and make application for the appropriate examination prior to the deadline established and sufficiently in advance of anticipated employment to permit test results to be received by the Department of Education and processed in the normal certification cycle.

Section 4. [5.] An applicant shall pay the appropriate examination fee for each relevant test required to be taken, to the Educational Testing Service, publisher of the National Teacher Examinations, unless a lesser fee has been negotiated by the Department of Education. The fee for a specialty test developed by the Department of Education shall be equivalent to the current fee for the test administered by the Educational Testing Service.

Section 5. [6.] An applicant who fail to achieve at least the minimum score on one (1) or more of the core battery examinations (communication skills, general knowledge, professional knowledge) or on the specialty examination appropriate to the teaching field may retake the test or tests during one (1) of the scheduled test administrations.

Section 6. [7.] The Education Professional Standards Board shall collect data and conduct analyses of the score and institutional reports provided by the Educational Testing Service to determine the impact of these tests and permit a review of this administrative regulation on an annual or biennial basis.

ROSA WEAVER, Chair  
KEVIN M. NOLAND, Attorney

APPROVED BY AGENCY: June 22, 1998

FILED WITH LRC: July 8, 1998 at 3 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation will be held on August 27, 1998, at 10 a.m. in the 1st Floor Conference Room, Capital Plaza Tower, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 20, 1998, five work days prior to hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

Contact Person: Dr. Susan Leib, Associate Commissioner, Office of Teacher Education and Certification, 1024 Capital Center Drive,

Frankfort, Kentucky 40601, (502)-573-4606, FAX (502)-573-1610

## REGULATORY IMPACT ANALYSIS

Contact Person: Patricia Hartanowicz

(1) Type and number of entities affected: All new teacher applicants.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: New teacher applicants will save \$150 in assessment fees.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements:

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: State funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The assessment method is not being effected by this change in regulation.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical areas in which implemented and on Kentucky: Cost savings to teacher applicants as mentioned in (2)(a).

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication:

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? Tiering is not applied. All teacher applicants within a specific content area are expected to complete the same testing requirements.

## WORKFORCE DEVELOPMENT CABINET Department of Vocational Rehabilitation (Amendment)

781 KAR 1:050. Carl D. Perkins Comprehensive Rehabilitation Center.

RELATES TO: KRS 151B.190, [34-CFR-361.31(b)]; 29 USC 706(8)(A)

STATUTORY AUTHORITY: KRS 151B.185, 151B.195[, 34-CFR 361.31(b)]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151B.195 directs the Commissioner, Department of Vocational Rehabilitation to promulgate [prescribe rules and] administrative regulations governing the services and administration of the Department of Vocational Rehabilitation. This administrative regulation establishes the criteria for admission to and discharges from the Carl D. Perkins Comprehensive

Rehabilitation Center.

Section 1. Definitions. (1) ~~["Client" means an individual who has been determined by an appropriate state unit staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.31(b), which is adopted without change.~~

(2) "Applicant" means an individual who has signed a letter or document requesting vocational rehabilitation services and for whom the following minimum information has been furnished: name and address, disability, age and sex, date of referral, and source of referral.

(2) "Director" means Division Director of the Carl D. Perkins Comprehensive Rehabilitation Center.

(3) "Discharge" means that no further services shall be provided to an individual [applicant or client]. The individual [applicant or client] shall be transported to the home area and the Carl D. Perkins Comprehensive Rehabilitation Center (CDPCRC) shall no longer charge per diem against the case.

(4) "Eligible individual" means an individual who has been determined by an appropriate department staff member to meet the basic conditions of eligibility for vocational rehabilitation services as defined in 34 CFR 361.42.

(5) "Excused absence" means any absence due to personal illness, injury, or accident; serious illness of family members; death of spouse, brother or sister, children, including stepchildren, foster children, parents or spouse's parents, or grandparents or spouse's grandparents; requirements to appear in court; military assignments; and other compelling circumstances making it unwise or inadvisable to attend class. In the event of illness, an individual may be requested to present a medical statement. Regardless of whether an individual believes an absence(s) to be excused or unexcused, the individual shall notify the counselor and/or teacher or an appropriate administrator of the absence(s) and the reason therefore, either prior to the absence(s) or as soon thereafter as practical.

(6) [(5)] "Expulsion" means that the individual [applicant or client] has been dismissed from CDPCRC pursuant to Section 5 of this administrative regulation.

(7) "Suspension" means that the applicant or eligible individual [client] shall not receive CDPCRC services for a period of time not to exceed twenty (20) class days, and that the applicant or eligible individual [client] shall be transported to the home area; but the applicant or eligible individual [client] shall remain enrolled in the program. A per diem shall be charged against the case, and services may resume as soon as the suspension ends.

[(7)] "Excused absence" means any absence due to personal illness, injury, or accident; serious illness of family members; death of spouse, brother or sister, children including stepchildren, foster children, parents or spouse's parents, or grandparents or spouse's grandparents; requirements to appear in court; military assignments; and other compelling circumstances making it unwise or inadvisable to attend class. In the event of illness, a student may be requested to present a medical statement. Regardless of whether a student believes an absence(s) to be excused or unexcused, the student shall notify the counselor and/or teacher or an appropriate administrator of the absence(s) and the reason therefore, either prior to the absence(s) or as soon thereafter as practical.]

(8) "Unexcused absence" means any absence that does not meet the definition of excused absence as described.

(9) "Unexcused tardy" means that an individual [applicant or client] is late for class and does not have a note describing the reason from counseling, medical or other professional staff.

Section 2. Admissions Policy. (1) Individuals admitted to CDPCRC shall meet one (1) of the following conditions:

(a) The individual is an applicant of the Department of Vocational Rehabilitation for whom an assessment is needed prior to making an eligibility or ineligibility decision.

(b) The individual is an eligible individual [a client] of the Department of Vocational Rehabilitation who requires services of the type provided by CDPCRC, in order to benefit in terms of an employment outcome.

(c) The individual has made arrangements [is an applicant or client of other agencies which have agreed] to reimburse CDPCRC for the cost of services provided.

(2) All prospects for admission shall provide [submit an application for CDPCRC services, including] the following:

(a) A consent for CDPCRC to provide emergency medical care. In the case of minors, and persons who have been adjudged legally disabled, the individual's [applicant's or client's] parent or guardian, as appropriate, shall give the permission, subject to the limitations of KRS 387.660(3).

(b) An agreement by the individual [applicant or client] or others to assume responsibility for living arrangements, in the event that the individual [applicant or client] is later discharged from CDPCRC. In the case of minors and individuals [persons] who have been adjudged legally disabled, the parent or guardian, as appropriate, shall agree to assume responsibility for living arrangements.

(c) A description of any limitations that the individual [applicant or client] may have in performing activities of daily living.

(3) No individual [applicant] or client shall be admitted to any CDPCRC program if there is evidence that a medical or behavioral condition represents a direct threat to the health or safety of self or others. The determination of whether such a condition exists shall be made by a written opinion from a CDPCRC professional with expertise concerning the identified condition [skilled in the area in question], based upon documentation submitted at referral, and any other information the professional shall gather as needed.

(4) When it is determined that the documentation submitted indicates the possibility that the individual's [applicant's or client's] medical or behavioral condition represents a direct threat to self or others, the CDPCRC admissions counselor shall select a CDPCRC professional with expertise concerning [in] the identified condition [area that is likely to be a problem], and shall submit the documentation to that professional for an opinion.

(5) When the admissions counselor has requested an opinion from a CDPCRC professional, the decision of the [such] professional shall determine whether the individual [applicant or client] shall be admitted to CDPCRC during that referral. [No such decision shall stand for more than a single referral and] If the individual [applicant or client] is referred at a later time, a new opinion shall be submitted.

(6) The admissions counselor or the admissions committee, as appropriate, shall at the time that the individual [applicant or client] is accepted for CDPCRC services for evaluation or treatment and training, establish a list of recommended services for the individual [applicant or client] and make a referral to the appropriate service area.

(7) When a decision is made to accept an individual [applicant or client] for admission, the individual [applicant or client] shall be notified in writing of the decision, and the date of admission, and a copy of that notification shall be sent to the referral sources, as appropriate.

(8) When a decision is made not to admit an [the] applicant or eligible individual [client] to CDPCRC the referral source shall be notified in writing of the decision giving justification for that decision. The applicant or eligible individual [client] shall be notified of the decision and informed of the availability of the Client Assistance Program and the right to a [an administrative review or fair] hearing.

(9) Applicants or eligible individuals [clients] who are dissatisfied with admissions decisions may appeal [request an administrative review of] the decision pursuant to 706 KAR 1:100.

Section 3. Retention Policy. The decision to provide further services after an individual [applicant or client] has completed a CDPCRC program shall be based upon the following:

(1) Further programs are requested by the referral source, or any CDPCRC professional believes that the individual [applicant or client] requires further services; and

(2) The program requested for the individual [applicant or client] is available; and

(3) If applicable, the individual has made arrangements to reimburse CDPCRC for the cost of services provided.

Section 4. Discharge Policy. (1) Voluntary discharge from the CDPCRC may be for the following reasons:

(a) The individual has completed a program of services, and is not qualified for another CDPCRC program;

(b) The individual does not desire further services from CDPCRC;

(c) The individual's medical condition requires treatment away from the CDPCRC for an extended period of time; or

(d) The individual wishes to leave CDPCRC and cannot be con-

vinced to stay.

(2) An individual [applicant or client] may be involuntarily discharged from CDPCRC for any of the following reasons:

(a) The individual fails to make progress in the program of services and efforts to resolve the problem have been unsuccessful;

(b) The individual is no longer qualified for the program and no other needed program is available;

(c) The individual's behavioral condition deteriorates to the point of direct threat to the safety of others;

(d) The individual has been unexcused, absent from class or tardy more than five (5) days in a three (3) month training program or more than ten (10) days in a training program exceeding three (3) months duration;

(e) The individual is expelled for cause.

(3) When a decision is made to discharge an individual [applicant or client] for failure to make progress for medical, psychological, behavioral, or personal reasons, these procedures shall be followed:

(a) The decision to discharge from a particular program shall be made by the program manager, with documentation and participation by staff within the department. Discharge from a particular program does not necessarily imply discharge from the facility.

(b) Should the reason for discharge necessitate services outside the facility (e.g., medical, psychological), the individual [applicant or client] may be readmitted when the problem is resolved.

(4) An individual [The applicant or client] may be discharged from CDPCRC without prior notice if necessary to prevent harm to persons or property, or to prevent serious disruption of CDPCRC programs.

Section 5. Suspension and Expulsion Policy. The director or a designee may suspend or expel an individual [applicants or clients] from CDPCRC when it has been determined that the individual's [applicant's or client's] behavior has upset the order of the institution, or has endangered the safety of others, or indicates that the individual [applicant or client] is persistently unwilling to comply with the lawful administrative regulations for the governance of CDPCRC.

(1) Suspension.

(a) An individual [applicant or client] may be suspended or expelled for any of the following specific reasons:

1. Physical abuse of another person;

2. The threat or use of violence;

3. The possession or use of alcohol, a controlled substance, or being under the influence of alcohol or a controlled substance on CDPCRC grounds, or at a CDPCRC-sponsored activity;

4. Stealing, destruction of, or defacing of CDPCRC or private property;

5. The carrying or use of weapons;

6. Documented, persistent refusal to participate in a planned program of services; or

7. Flagrant violations of CDPCRC administrative regulations that upset the order of the institution.

(b) Suspension shall mean a dismissal from CDPCRC for a period not to exceed twenty (20) class days.

(c) An individual [applicant or client] shall not be suspended until after the following due process procedures have been followed:

1. The individual [applicant or client], or the parent or guardian if under eighteen (18) years of age or legally disabled, and the referring counselor, if applicable, shall be given oral or written explanation of the charges [against the applicant or client];

2. The individual [applicant or client] shall be given an explanation of the evidence on which the charges are based; and

3. The individual [applicant or client] shall be given an opportunity to present facts and views relating to the charges to the director or a designee;

(d) Due process procedures shall precede any suspension from CDPCRC, except when immediate removal [of the applicant or client] from CDPCRC is necessary, in the judgment of the director or a designee, to protect persons or property or to prevent disruption of CDPCRC programs. In such cases, the due process procedures shall follow the suspension as soon as possible, but in no case later than five (5) class days following the effective date of the suspension.

(2) Expulsion.

(a) The director or a designee may expel an individual [applicant or client] under the following conditions:

1. The offense results in the individual [applicant or client] being

convicted of a felony or misdemeanor committed on CDPCRC property, or while under the CDPCRC's jurisdiction;

2. The offense is a repeat of an earlier offense for which the individual [applicant or client] was suspended;

3. The offense is an instance of a history of persistent misconduct, and efforts to cause a change in the individual's [applicant's or client's] behavior have been unsuccessful;

4. The offense involves violence, and in the opinion of the director or a designee, others are likely to be harmed if the individual [applicant or client] remains at CDPCRC; or

5. The offense is a flagrant and willful violation of CDPCRC administrative regulations, and in the opinion of the director or a designee, there is little likelihood that efforts to deter the individual [applicant or client] from committing similar offenses will be successful.

(b) No individual shall be expelled [expulsion shall occur] until the following procedures have been followed:

1. The director or a designee shall [appoint a person to] review the intent to expel [expulsion decision];

2. The person designated to review the intent to expel [decision] shall set a time for a review [hearing], within ten (10) class days of the proposed date of the expulsion;

3. The individual involved, and the parents or guardian if the individual is under eighteen (18) years of age or legally disabled, shall be informed of the nature of the charges and the time and date set for the review [hearing];

4. The individual involved and the parents or guardian, if the individual is under eighteen (18) years of age or legally disabled, shall be informed of the right to appear at the review [hearing] and to be represented by counsel or other representation and that failure to participate in the review may result in a decision to expel;

5. An [The hearing shall be held, and the individual involved and the representative shall have the right to present evidence in the applicant's or client's behalf and to cross-examine witnesses; and

6. The hearing shall stand in place of the agency administrative review requirement, and the applicant or eligible individual [client] and the representative shall be informed of the right to appeal [a fair hearing].

(c) Whenever an applicant or eligible individual [a CDPCRC enrollee] is informed of the intent to suspend or expel, the individual shall be also informed of the availability of the Client Assistance Program.

(d) An applicant or eligible individual [client] who is dissatisfied with the results of the director's review of the expulsion decision [expedited administrative review] may request an impartial hearing pursuant to 781 KAR 1:010.

Section 6. Attendance Policy. (1) Students shall be treated uniformly in terms of their attendance at CDPCRC. Each classroom instructor shall maintain a uniform attendance accounting procedure.

(2) The instructor or training supervisor shall determine when an absence or tardy from a scheduled class is excused or unexcused.

SAM SERRAGLIO, Commissioner

SUE SIMON, Legal Counsel

APPROVED BY AGENCY: June 24, 1998

FILED WITH LRC: June 25, 1998 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1998 at 10 a.m. eastern time in the DVR training room, 209 St. Clair Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency by August 14, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: George Parsons, Department of Vocational Rehabilitation, 209 St. Clair Street, Frankfort, Kentucky 40601, (800) 372-7172 (V/TDD), (502) 564-6745 (FAX).

The Department of Vocational Rehabilitation does not discrimi-

nate on the basis of race, color, national origin, sex, disability, age, religion or marital status in training, activities or employment practices in accordance with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Title VII of the Civil Rights Act of 1964 and the Americans With Disabilities Act of 1990. The meeting facility is accessible to people with disabilities. The Department will provide upon request, reasonable accommodations including auxiliary aids and services necessary to afford individuals with a disability an equal opportunity to participate in all services, programs, and activities. If an interpreter or other auxiliary aid or service is needed, contact George Parsons at the address above.

#### REGULATORY IMPACT ANALYSIS

Contact person: George Parsons

(1) Type and number of entities affected: Individuals who wish to access rehabilitation services at the Carl D. Perkins Comprehensive Rehabilitation Center.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographic area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: None

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: There will be no additional paperwork or reporting requirements.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: No revenue implications.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

1. Geographical area in which administrative regulation will be implemented: None

2. Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods were considered. Counsel has advised that the material is restrictive and is designated by KRS Chapter 13A as regulatory in nature.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: Not applicable.

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: The administrative regulation is being amended to reduce internal process requirements and to allow the rehabilitation center to serve individuals who are not applicants or eligible individuals. The changes will result in expanded service to the community.

(11) TIERING: Is tiering applied? No. Federal statutes and regulations require uniformity in rules and regulations dealing with applicants or individuals eligible for vocational rehabilitation services.

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. 34 CFR 361 July 1, 1997.

2. State compliance standards. This administrative regulation sets standards for admission to and discharge from the Carl D. Perkins Comprehensive Rehabilitation Center.

3. Minimum or uniform standards contained in federal mandate. The federal mandate require states to adopt policies and procedures as are necessary for the administration of the vocational rehabilitation program.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? Yes

5. Justification or imposition of the stricter standards, or additional or different responsibilities or requirements. No federal standards exist for the governance of state owned and operated facilities. This regulation sets standards for admission and discharge which are necessary for service delivery as the Carl D. Perkins Comprehensive Rehabilitation Center.

#### PUBLIC PROTECTION AND REGULATION CABINET Kentucky Board of Tax Appeals (Amendment)

#### 802 KAR 1:010. Rules of practice and procedure.

RELATES TO: KRS 131.345

STATUTORY AUTHORITY: KRS 131.345

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.345 provides that "Appeals to the Kentucky Board of Tax Appeals shall be in accordance with rules prescribed by the board." The following rules have been adopted in compliance with that authority.

Section 1. Petition of Appeal. (1) A document or pleading which initiates an appeal to the Kentucky Board of Tax Appeals shall be styled "Petition of Appeal." The petition and subsequent pleadings shall refer to the appealing party as "appellant", and to the responding party as "appellee".

(2) Petitions of appeal to the board shall be filed in person or by mail at the principal office of the board in Frankfort, Kentucky. Filings by facsimile or other electronic means shall not be accepted. The petition [Appeals to the Board. (1) All appeals from rulings, orders or determinations of any state or county agency shall be filed with the board by filing a complaint or petition of appeal with the board at its offices at Frankfort, Kentucky, within thirty (30) days from the date of the mailing of the agency's ruling, order or determination.

(2) Except as provided in subsection (3) of this section, such appeal shall be filed in quintuplicate and shall contain a brief statement of the law or facts in issue and the appellant's [petitioner's] position as to the law or facts. [Said appeal shall have attached thereto a copy of the final ruling, order or determination of the agency appealed from.]

(3) In appeals from final rulings, orders, or determinations of a county board of assessment appeals, the appellant shall file an original and two (2) copies of the petition of appeal and shall include three (3) copies of the county board of assessment appeals' final ruling, order or determination.

(4) In appeals from final rulings, orders or determinations of a state government agency, the appellant shall file an original and four (4) copies of the petition of appeal and shall include five (5) copies of the state government agency's final ruling, order or determination.

(5) If an appellant fails to comply with subsections (3) or (4) of this section, the petition of appeal shall be accepted by the board; however, failure by an appellant to remedy noncompliance after notice shall subject appellant's petition to dismissal.

Section 2. Representation in Proceedings Before the Board. (1) If a party is represented by an attorney in proceedings before the board, his attorney shall file an entry of appearance within thirty (30) days after the date on which the petition of appeal is filed. An appellant's attorney shall not be required to file an entry of appearance if he files the petition on behalf of the appellant.

(2) An attorney admitted to practice in another state, but not in the Commonwealth of Kentucky, shall be permitted to represent a party

before the board if the attorney complies with Supreme Court Rule (SCR) 3.030(2). [All appeals from final rulings of a county Board of Assessment Appeals shall be appealed in like manner, except that such appeal shall be filed in triplicate.]

Section 2. Hearings. (1) Hearings shall be held at the offices of the board at Frankfort, Kentucky, except that a case may be assigned for hearing elsewhere in the Commonwealth of Kentucky when deemed necessary to afford a taxpayer or interested party an opportunity to appear before the board with as little inconvenience and expense as practicable.

(2) All appeals shall be heard by the full board, provided that one (1) member thereof may be authorized to hear an individual appeal pursuant to order entered of record by the board.

(3) Appeals shall be assigned for hearing upon motion of any interested party or the board may, in its discretion, assign any appeal for hearing, having due regard for the convenience of the parties. Except where an appeal is assigned for hearing by agreement of the parties, all interested parties shall be given reasonable notice of a hearing date.]

(3) [(4)] Parties to actions filed with this board shall [may] be represented at the hearings as follows:

(a) An individual may represent himself in hearings before the board;

(b) An individual who is not an attorney shall [may] not represent any other individual, corporation, trust, estate, partnership or artificial entity [corporations or individuals] before the board;

(c) An attorney who is not licensed to practice in Kentucky may practice before the board if he obtains local counsel in compliance with RAP 3.030(b).

(5) All hearings shall be formally reported by the reporter for the board.]

Section 3. Discovery. (1) The parties shall conclude discovery at least fifteen (15) days prior to the date scheduled for hearing an appeal. Motions to compel discovery shall be governed by CR 37.01. Failure to comply with discovery may subject the noncomplying party to the sanctions set forth in CR 37.02 through CR 37.05, including but not limited to limitation of proof, judgment against the noncomplying party, and involuntary dismissal.

(2) A party may introduce the testimony of a witness by deposition at a hearing before the board or its hearing officer. [Procedures and Evidence. (1) The Rules of Civil Procedure shall govern in all procedural matters coming before this board.

(2) The rules of evidence governing civil proceedings in the Commonwealth of Kentucky shall, insofar as practicable, govern hearings before the board.

(3) Evidence may be introduced by oral testimony at a hearing before the board or by deposition. The Kentucky [provisions of the] Rules of Civil Procedure shall govern [apply to] the taking of depositions in proceedings before the board or its hearing officer. A deposition [No depositions] shall not be included in the evidentiary record [considered] unless it is filed with the board within ten (10) days after the date of the hearing. The board or its hearing officer shall extend the time to file a deposition only upon a showing of good cause by the party requesting the extension. [submission of the appeal, it has been filed with the board; provided, however, that the board may, for good cause shown and upon motion filed within said ten (10) days grant an extension of time to file any deposition.

(4) The petitioner or appellant shall be required to complete his evidence in chief and so announce before respondent or appellee shall be required to introduce evidence, unless otherwise ordered by the board.]

(3) [(5)] The parties to an appeal may stipulate the relevant facts [in issue] in whole or in part. If the relevant facts are stipulated in whole, a hearing shall not be required. [Said] Stipulations of fact shall be written [reduced to writing] and filed with the board prior to the hearing of an appeal. The board or its hearing officer shall extend the time to file stipulations of fact only upon a showing of good cause by the party requesting the extension.

(4) Upon motion of a party or by order of the board or its hearing officer, a prehearing conference may be scheduled directing the attorneys for the parties to appear. [All parties are encouraged to stipulate facts whenever possible.

(6) Discovery by parties shall be concluded fifteen (15) days prior to the time assigned for hearing by the board.]

Section 4. Procedure and Evidence. (1) KRS Chapter 13B shall govern all procedural and evidentiary matters before the board.

(2) In evidentiary matters in which KRS Chapter 13B is not dispositive, the Kentucky Rules of Evidence shall be instructive, but not conclusive, to the extent they are consistent with KRS Chapter 13B, KRS 131.310-.370, 133.120 and this administrative regulation.

Section 5. Order of Proof at Hearing. (1) At the hearing, the appellant shall first produce his evidence; the appellee will then produce his evidence. The appellant shall ordinarily exhaust his evidence before the appellee begins; however, the order of proof may be regulated by the board or its hearing officer to expedite the hearing and enable the board or its hearing officer to obtain a clear view of the whole evidence.

(2) Evidence produced by a party shall be subject to questioning by the adverse party, the board, or its hearing officer.

(3) After the parties offer evidence in chief, they shall be confined to rebutting evidence, unless the board or its hearing officer for good reasons in furtherance of justice permits them to offer additional evidence in chief. [Parties' Failure to Appear at Hearing. (1) Where petitioner or appellant fails to appear at the hearing of his case, and no good cause is shown for his failure to appear, the case may be ordered dismissed for lack of prosecution by the board.

(2) Where the respondent or appellee fails to appear at the hearing of a case and no good cause is shown for his failure to appear, the board or any designated member thereof may proceed with the hearing of the case and it shall thereafter be submitted as provided by these rules:

Section 5. Appeal; When and How Submitted. When all interested parties have announced through in presenting evidence or after all interested parties have had a reasonable opportunity to present evidence, the board may order the appeal to be submitted for a final ruling or order. Upon request of either party or upon the board's own motion, the order of submission may give the parties time within which to file briefs. Upon motion of any party and for good cause, the order of submission may be set aside and leave given to any party to take additional evidence.]

Section 6. Briefs. (1) The board or its hearing officer may order the parties to file briefs stating the factual and legal issues to be addressed by the board in its final order or by the hearing officer in his recommended order.

(2) Each party shall file with the board an original and three (3) copies of a brief, and shall append to a brief copies of any cited authorities.

(3) Each party shall file with the brief proposed findings of fact, conclusions of law, and final order, if the appeal is heard by the board, or recommended order, if the appeal is heard by the hearing officer.

(4) Briefs shall be typewritten or printed [and filed in quadruplicate with the board. A certification shall accompany any brief to the effect that copies have been served upon all interested parties as provided by the Rules of Civil Procedure]. Photostatic copies will be accepted in lieu of typewritten copies. All copies of the brief must be clearly legible and double spaced except for quotations on paper eight and one-half (8 1/2) inches wide and eleven (11) inches long, with margins of not less than one (1) inch and a font size of not less than twelve (12) point font.

Section 7. Motions, Responsive Pleadings and Time Computation.

(1) A party shall file an [The] original and three (3) copies of any pleadings and motions [motion shall be filed] with the board. All pleadings and motions [and said motion] shall be accompanied by a certification that copies have been served on all interested parties as required by the Rules of Civil Procedure.

(2) A party shall file an original and three (3) copies of a response to a motion within ten (10) days from the date on which the motion is filed. The board or its hearing officer may consider a party's failure to respond to a motion as agreement to the action requested by the motion.

(3) A movant may file an original and three (3) copies of a reply to a party's response to his motion within ten (10) days from the date on



which the response is filed.

(4) CR 6.05 shall apply to computation of time when a party is served by mail; however, when the board orders some act or pleading to be filed by a particular calendar date, CR 6.05 shall not apply even if a party is served by mail.

(5) The board or its hearing officer may modify response and reply times upon consideration of any scheduled hearing dates or upon good cause shown by the parties.

(6) The board or its hearing officer shall grant a motion for continuance of a hearing only upon a showing of good cause by the party requesting the continuance.

Section 8. Subpoenas. Any member of the board or its hearing officer shall issue a subpoena only upon a request in writing by a party. [Any member of the board, on the request in writing of any party to the appeal before it, or his attorney, shall issue subpoenas requiring the attendance of witnesses and the giving of testimony and subpoena duces tecum requiring the production of any returns, books, papers, documents, correspondence, and other evidence pertaining to the matter under inquiry in accordance with the Rules of Civil Procedure.]

Section 9. Records and Costs. (1) No record filed with the board is subject to withdrawal by any person, except on order of the board.

(2) The expense of causing hearing proceedings to be recorded in the manner required by KRS Chapter 13B [Expenses of reporting hearings] shall be paid by the state from the appropriation of the board. If any party desires to have the evidence at a hearing transcribed, he shall cause the reporter to prepare one (1) original transcript to be filed with the board and such additional copies as said party may desire. The party requesting a transcript of evidence shall pay for the original and any requested copy or copies. [Any other interested party may request a copy or copies of said transcript and shall pay for the same.]

GEORGE H. HELTON, Chairman

ROBERT G. LAYTON, Staff Attorney

APPROVED BY AGENCY: July 9, 1998

FILED WITH LRC: July 13, 1998 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 27, 1998 at 9 a.m. at the Hearing Room of the Kentucky Board of Tax Appeals, 1003 Twilight Trail, Suite A-1, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 20, 1998, five working days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Mr. Robert G. Layton, Staff Attorney, Kentucky Board of Tax Appeals, P.O. Box 2120, Frankfort, Kentucky 40602-2120; telephone number (502) 564-4316, fax number (502) 564-7502.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Robert G. Layton, Staff Attorney

(1) Type and number of entities affected: Any party, including the attorney general, on behalf of the Commonwealth, aggrieved by any ruling, order or determination of any state or county agency charged with the administration of any taxing or licensing measure.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any affect upon

competition) for the:

1. First year following implementation: The administrative regulation strengthens the requirement that a party appealing to the Kentucky Board of Tax Appeals file an original and a specified number of copies of the petition of appeal and subsequent pleadings, which has been required under the former administrative regulation but not strictly enforced. An appealing party will bear these copying costs under the proposed administrative regulation, and the board will be relieved of the copying, maintenance and staff expenses necessitated by making the required copies which have not been filed with an original pleading in current practice.

2. Second and subsequent years: Compliance, reporting and paperwork requirements are expected to remain the same as the first year following implementation.

(3) Effects on the promulgating administrative body:

(a) Direct or indirect costs or savings:

1. First year: The board will be relieved of the copying, maintenance and staff expenses necessitated by making required copies or original pleadings filed with the board that parties fail to provide.

2. Continuing costs or savings: The board expects the copying and related cost savings to continue.

(b) Additional factors increasing or decreasing costs: KRS Chapter 13B, which governs the conduct of administrative hearings, requires the board to promulgate the proposed administrative regulation for statutory compliance, imposes increased costs on the board because of the need to employ one full-time hearing officer. The board requires the employment of hearing officers to comply with mandates in KRS Chapter 13B that impose time limits for issuing decisions by the board as well as heightened statutory requirements on the hearing process which cannot be met by the board. However, the employment of a hearing officer is reducing the board's current case backlog and will maintain a timely docket in the future. The reduction of the case backlog will minimize staff costs and return significant revenue to the Commonwealth that has been held by pending appeals.

(c) Reporting and paperwork requirements: The board anticipates no change in reporting and paperwork requirements as a result of the proposed administrative regulation.

(4) Assessment of anticipated effect on state and local revenues: state and local revenues should benefit by the efficient and timely rendition of decisions by the board assisted by the promulgation of the proposed administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Implementation and enforcement will be funded by the board's budget appropriation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods to promulgation of the proposed administrative are not possible due to the strict compliance requirements imposed on the board by KRS Chapter 13B.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting regulations: None

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No, because KRS Chapter 13B requires constitutional uniformity in the application of administrative hearing procedures to all parties to the hearing process, which is the subject matter of the proposed administrative regulation. Therefore, tiering is constitutionally prohibited in this regulation.

**CABINET FOR HEALTH SERVICES  
Department for Medicaid Services  
(Amendment)**

**907 KAR 1:006. Coverage for persons eligible for Title XVIII benefits.**

RELATES TO: KRS 205.520, 42 USC 1396a, PL 105-33

STATUTORY AUTHORITY: KRS 194.050, 205.520, 1998 GA HB 132

**NECESSITY, FUNCTION, AND CONFORMITY:** The Cabinet for Health Services, Department for Medicaid Services [Human Resources] has responsibility to administer the Medicaid Program [of Medical Assistance] in accordance with Title XIX of the Social Security Act. KRS 205.520 authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the special coverage factors applicable to both categorically needy and medically needy individuals eligible for benefits under Title XVIII, Part A, Hospital Insurance Benefits (HIB); Title XVIII, Part B, Supplementary Medical Insurance (SMI); Title XVIII Qualified Medicare Beneficiaries (QMB); [and] Title XVIII Qualified Disabled Working Individuals (QDWI); Title XVIII, Specified Low-Income Medicare Beneficiaries (SLMB); and Title XVIII, Qualified Individuals (QI).

**Section 1. Purchase of Coverage under SMI.** The cabinet shall pay the SMI premium for [all] recipients eligible for such coverage who are receiving a money payment under either the Supplemental Security Income program or the state program of optional or mandatory supplementation.

**Section 2. Deductibles and Coinsurance.** Effective for services provided on or after February 1, 1989, the cabinet shall pay the deductible or coinsurance amount for a [any] medical service covered under HIB or SMI to an individual eligible for such coverage. The actual amount paid for coinsurance shall be the uncovered percentage of the total permissible cost for the service as determined by the cabinet.

**Section 3. Limitations Applicable to Nonmoney Payment Recipients.** An [Any] HIB/SMI eligible categorically needy or medically needy individual, for whom the cabinet does not purchase SMI coverage, is expected to retain HIB/SMI coverage, with premium payments considered as an income deduction. Failure to retain such coverage does not obligate the cabinet for [any] payment in excess of the deductible and coinsurance amounts.

**Section 4. Coverage for Qualified Medicare Beneficiaries.** (1) Effective January 1, 1989, qualified Medicare beneficiaries as defined in 907 KAR 1:011 shall be entitled to the following coverage, regardless of whether the medical service is covered under the medical assistance program as a regularly covered service:

- (a) Payment of Part A and Part B Medicare premiums;
- (b) Deductibles; and
- (c) Coinsurance.

(2) For providers not regularly participating in the Medicaid program, the appropriate agreement must be made with the Department for Medicaid Services to provide for limited participation in the Medicaid program; if the appropriate agreement is not made, the services will not be considered to be covered under this section.

**Section 5. Qualified Disabled Working Individuals.** Effective July 1, 1990, in accordance with Section 6408(d) of the Omnibus Budget Reconciliation Act of 1989, the cabinet shall pay the Medicare Part A premium for [all] recipients who meet [all] the requirements to be a qualified disabled working individual as defined in Sections 1818 and 1905(s) of the Social Security Act.

**Section 6. Specified low-income Medicare beneficiaries as defined in 907 KAR 1:011 are entitled to payment of the Part B Medicare premium.**

**Section 7. Qualified Individuals (QI).** (1) Qualified Individuals (QI) as defined in 907 KAR 1:011 shall be entitled to payment of the Part B Medicare premium for Group I and the payment of that portion of the Medicare Part B premium attributable to home health costs for Group II.

(2) The number of individuals eligible in this group shall be limited by a block grant and eligibility shall be established on a first-come first-serve basis.

(3) In years following the year of initial approval preference shall be given to the individuals who qualified the previous year.

(4) Coverage for this group shall terminate on January 1, 2003.

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: July 7, 1998

FILED WITH LRC: July 8, 1998 at 11 a.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on August 21, 1998 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 1998 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

**REGULATORY IMPACT ANALYSIS**

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: Approximately 80,500 potential individuals eligible for Medicare.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: There are no state funds which are being expended to implement this provision.

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: There are no state funds which are being expended to implement this provision.

2. Continuing costs or savings: (None)

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: the Department must track the number of new individuals served and the amount of federal funds expended.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: \*The Health Care Financing Administration has allocated 100% federal funds equaling \$3,970,000 in order to implement this provision.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be

implemented: To be implemented statewide.

(b) Kentucky: None were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Citizens with greater than 120% and less than or equal to 175% of the federal poverty level will receive assistance paying Part B Medicare premiums.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health of Medicaid recipients by preventing access to the Medicare Program.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: NA

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. No.

3. State the aspect or service of local government to which this administrative regulation relates. None

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollars estimates cannot be determined, provided a brief narrative to explain the fiscal impact of the administrative regulation. None

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et. seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et. seq. Pursuant to PL 105-33, Kentucky must also provide payment for Medicare Part B premiums for individuals who meet the criteria established in this regulation.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

#### CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Administration and Development (Amendment)

#### 907 KAR 1:011. Technical eligibility requirements.

RELATES TO: KRS 205.520, 341.360, 42 CFR 435, 403, 45 CFR 233.100, 8 USC 1612, 1641a, b, c, 38 USC 101, 107, 1304, 5303A, 42 USC 402, 416, 423, 1382c, 1383c, 1395i, 1396a

STATUTORY AUTHORITY: KRS 194.050, 205.520, HB 132, 1998 GA [42 CFR 403, 435, 45 CFR 233.100, 8 USC 1641a, b, c, 38 USC 101, 42 USC 402, 416, 423, 1382c, 1383c, 1395i, 1396a, b, c, d, e, EO 96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services.] KRS 205.520 authorizes the cabinet, by administrative regulation to comply with any [a] requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the technical eligibility requirements of the Medicaid Program.

Section 1. Definitions. (1) "Child" means a dependent person who:

(a)1. Is under the age of eighteen (18); or

2. Is under age nineteen (19) if the person is:

a. A full-time student in a secondary school or the equivalent level of vocational or technical training; and

b. Expected to complete the program before age nineteen (19);

(b) Is not self-supporting;

(c) Is not a member of the Armed Forces of the United States; and

(d) If previously emancipated by marriage, has returned to the home of his parents, or to the home of another relative.

(2) "Kentucky Transitional Assistance Program (K-TAP)", means Kentucky's version of the federal block grant program of Temporary Assistance for Needy Families (TANF) Program, a money payment program for children who are deprived of parental support or care due to:

(a) Death;

(b) Continued voluntary or involuntary absence;

(c) Physical or mental incapacity of one (1) parent or step-parent if two (2) parents are in the home; or

(d) Unemployment of one (1) parent if both parents are in the home.

(3) "Minor teenage parent" means an individual who:

(a) Has not attained eighteen (18) years of age;

(b) Is not married; and

(c) Has a minor child in his care.

(4) "Qualified alien" is defined in 8 USC 1641(a) through (c).

(5) "Veteran" is defined by 38 USC 101.

Section 2. The Categorically Needy. An individual receiving Title IV-E benefits, Supplemental Security Income, Optional or Mandatory State Supplementation shall be eligible for Medicaid as a categorically needy individual. In addition, the following classifications of needy persons shall be included in the program as categorically needy and thus eligible for Medicaid participation.

(1) A child in a foster family care or private nonprofit child caring institution dependent in whole or in part on a governmental or private agency;

(2) A child in a psychiatric hospital, psychiatric residential treatment facility, or medical institution for the mentally retarded;

(3) A pregnant woman;

(4) A child of unemployed parents;

(5) A child in a subsidized adoption dependent in whole or in part on a governmental agency;

(6) A family which correctly received Medicaid for three (3) of the last six (6) calendar months and would have been terminated from receipt of AFDC using AFDC methodologies in effect on July 16, 1996 as a result of new or increased collection of child or spousal support shall be eligible for extended Medicaid coverage for four (4) consecu-

tive calendar months beginning with the first month the family would have been ineligible for AFDC.

(7) A family which would have been terminated from AFDC assistance using the AFDC methodologies in effect on July 16, 1996 because of increased earnings, hours of employment or loss of earnings disregards;

(8) A child (but not his parents) who would have been financially eligible for Aid to Families with Dependent Children benefits using the AFDC methodologies in effect on July 16, 1996, who was born after September 30, 1983 and who is under the age of five (5); and effective July 1, 1987, a child (but not his parents) who would have been financially eligible for Aid to Families with Dependent Children benefits using AFDC methodologies in effect on July 16, 1996, who meets the definition of Section 1(1) of this administrative regulation;

(9) A child born to a woman eligible for and receiving Medicaid if the child has not reached his first birthday, resides in the household of the woman, and the woman remains (or would remain if pregnant) eligible for the assistance. In this situation, an application shall be deemed to have been made and the child found eligible for Medicaid as of the date of birth;

(10) An individual in an institution meeting appropriate patient status criteria who (if not institutionalized) would not be eligible for supplemental security income (SSI) or optional state supplementation benefits due to income, shall be eligible under a special income level which is set at 300 percent of the SSI benefit amount payable for an individual with no income. Eligibility for a similar hospice participant and similar participant in the waiver projects of home and community based services for the mentally retarded and the aged, blind or disabled shall also be determined under this provision. Eligibility of an individual whose gross income exceeds 300 percent of the previously specified SSI benefit amount shall not be determined in accordance with this provision;

(11) A qualified severely impaired individual as specified in 42 USC 1396a(a)(10)(A)(i)(II) and 1396d (to the extent the coverage is mandatory in this state);

(12) An individual who loses SSI eligibility but would be eligible for SSI benefits except for entitlement to or an increase in child's insurance benefits based on disability as specified in 42 USC 1383c;

(13) An individual specified in 42 USC 1383c who loses SSI or state supplementation payments as a result of receipt of benefits under 42 USC 402(e) or (f), would be eligible for SSI or SSP except for these benefits, and is not entitled to hospital insurance benefits under the Medicare program;

(14) A woman during pregnancy (and as though pregnant through the end of the month containing the 60th day of a period beginning on the last day of pregnancy), and an infant and child under six (6) years of age, as specified in 42 USC 1396a(1)(I), shall be required to meet the income requirements for this eligibility group as specified in 907 KAR 1:640;

(15) If an eligible infant or child is receiving covered inpatient services on a birthday which will make him ineligible due to age, the infant or child shall remain eligible until the end of the stay for which the covered inpatient services are furnished if the infant or child remains otherwise eligible except for age;

(16) Applicable with regard to determinations of eligibility for periods beginning on or after July 1, 1991, a child born after September 30, 1983, who has attained six (6) years of age but has not attained nineteen (19) years of age as specified in 42 USC 1396a(1)(I); and

(17) Applicable with regard to determinations of eligibility for periods beginning on or after July 1, 1998, providing that federal Medicaid matching funds are available to cover the costs of the program, a child born on or before September 30, 1983 who has not attained the age of nineteen (19) years as specified in 42 USC 1396a(1)(I);

(18) Applicable with regard to determinations of eligibility for periods beginning on or after January 1, 1991, a disabled widow, widower and disabled surviving divorced spouse, who would be eligible for SSI except for entitlement to an old-age, survivors, and disability insurance (OASDI) benefit resulting from a change in the definition of disability;

(19) A child who was receiving supplemental security income on August 22, 1996 and but for the change in definition of childhood disability would continue to receive supplemental security income; and

(2) A person with hemophilia who would be eligible for supplemental security income except he received a settlement in a class action lawsuit entitled, "Factor VIII or IX Concentrate Blood Products

Litigation".

Section 3. The Medically Needy. An individual (including a child as shown in Section 2(8) of this administrative regulation), and a pregnant woman meeting income and resource standards of the medically needy program) meeting technical requirements comparable to the categorically needy group, but with sufficient income to meet his basic maintenance needs may apply for Medicaid with need determined in accordance with income and resource standards prescribed by [907 KAR 1:640 and] 907 KAR 1:640 through 907 KAR 1:665 of the Cabinet for Health Services. The medically needy eligible groups shall include:

(1) A pregnant woman during the course of her pregnancy; and

(2) A woman who, while pregnant, is eligible for, has applied for, and has received medical assistance, shall continue to be eligible as though she were pregnant until the end of the month containing the 60th day of a period beginning on the last day of her pregnancy (i.e., the day on which her child is born or the pregnancy is otherwise terminated).

Section 4. Qualified Medicare Beneficiaries, [and] Qualified Disabled Working Individuals; Specified Low-Income Medicare Beneficiaries and Medicare Qualified Individuals (QI). (1) Coverage is extended to a qualified Medicare beneficiary as specified in 42 USC 1396a(a)(10)(E), subject to the income as shown in 907 KAR 1:640, and resource limitations shown in 907 KAR 1:645 [1:640], and for the scope of benefits specified in 907 KAR 1:006. A qualified Medicare beneficiary shall be eligible for and receiving Medicare Part A benefits, and may be determined eligible for benefits as a qualified Medicare beneficiary eligible individual effective for the month after the month in which the determination is made but not retroactively and not for the month in which the determination is made.

(2) A qualified disabled working individual as defined in 42 USC [1396i-2 and] 1396d(s) [of the Social Security Act] shall be eligible under Medicaid for payment of his Medicare Part A premiums as shown in 907 KAR 1:006.

(3) Specified low-income Medicare beneficiaries as defined in 42 USC 1396a(a)(10)(E)(iii) [of the Social Security Act] shall be eligible under Medicaid for payment of the Medicare Part B premiums.

(4) Medicare qualified individuals group 1 (QI-1) as established in 42 USC 1396a(a)(10)(E)(iv)(I) shall be eligible for payment of all of the Medicare Part B premium.

(5) Medicare qualified individuals group 2 (QI-2) as established in 42 USC 1396a(a)(10)(e)(iv)(II) shall be eligible for payment of that portion of the Medicare Part B premium attributable to home health costs.

Section 5. Technical Eligibility Requirements. Technical eligibility factors of families and individuals included as categorically needy under Section 2(1) through (19) [(7)] of this administrative regulation, or as medically needy under Section 3 of this administrative regulation shall be:

(1) A child in foster care, a private institution, psychiatric hospital, psychiatric residential treatment facility, or mental retardation institution shall meet the definition of Section 1(1) of this administrative regulation;

(2) Except as provided by Section 2 of this administrative regulation, a pregnant woman shall be eligible upon medical proof of pregnancy;

(3) Unemployment relating to eligibility of both parents and children shall include:

(a) Employment of less than 100 hours per month, except that the hours may exceed that standard for a particular month if the work is intermittent and the excess is of a temporary nature as evidenced by the fact that the individual was under the 100 hour standard for the prior two (2) months and is expected to be under the standard during the next month;

(b) The individual has prior labor market attachment consisting of earned income of at least fifty (50) dollars during six (6) or more calendar quarters ending on March 31, June 30, September 30, or December 31, within any thirteen (13) calendar quarter period ending within one (1) year of application, or the individual within twelve (12) months prior to application received unemployment compensation;

(c) The individual is currently receiving or has been found ineligi-

ble for unemployment compensation;

(d) The individual is currently registered for employment at the state employment office, and available for full-time employment;

(e) The unemployed parent shall not have refused suitable employment without good cause as determined in accordance with 45 CFR 233.100(a)(3)(ii);

(4) Under the definition contained in subsection (3) of this section, a parent shall not be considered as unemployed if he is:

(a) Temporarily unemployed due to weather conditions or lack of work if it is anticipated he can return to work within thirty (30) days; or

(b) On strike, or unemployed as a result of involvement in a labor dispute if the involvement would disqualify the individual from eligibility for unemployment insurance in accordance with KRS 341.360; or

(c) Unemployed because he voluntarily quit his most recent work for the purpose of attending school; or

(d) A farm owner or tenant farmer, unless he has previously habitually required and secured outside employment and currently is unable to secure outside employment; or

(e) Self-employed and not available for full-time employment.

(5) An aged individual shall be at least sixty-five (65) years of age.

(6) A blind individual shall meet the definition of blindness as contained in 42 USC 416 and 42 USC 1382c relating to RSDI and SSI.

(7) A disabled individual shall meet the definition of permanent and total disability as contained in 42 USC 423 and 42 USC 1382c relating to RSDI and SSI.

(8) Using AFDC methodologies in effect on July 16, 1996, a family who loses Medicaid eligibility solely because of increased earnings or hours of employment of the caretaker relative or loss of earnings disregards may receive up to twelve (12) months of extended medical assistance for family members included in the medical assistance unit prior to losing Medicaid eligibility. The extended medical assistance shall be divided into two (2) transitional six (6) month benefit periods. Each transitional benefit period has specified eligibility and reporting requirements.

(a) The first transitional six (6) month benefit period begins with the month the family would have become ineligible for AFDC using AFDC methodologies in effect on July 16, 1996.

1. To be eligible for this transitional benefit period, the family shall:

a. Have correctly received Medicaid assistance in three (3) of the six (6) months immediately preceding the month the family would have become ineligible for AFDC using AFDC methodologies in effect on July 16, 1996;

b. Have a dependent child living in the home; and

c. Meet the reporting requirements relating to earnings and child care costs no later than the 21st day of the fourth month.

2. If the family no longer has a dependent child living in the home, medical assistance for family members, except the former dependent child, shall be terminated the last day of the month the family no longer includes a dependent child, with eligibility for the former dependent child determined in accordance with usual program requirements.

3. If the reporting requirements are not met, the Medicaid benefits shall be denied for the second transitional six (6) month benefit period.

(b) 1. To continue to receive Medicaid for the optional second transitional six (6) month benefit period, the family shall meet the following conditions:

a. Received medical assistance for the entire first transitional six (6) month period and met the reporting requirements;

b. Have a dependent child living in the home;

c. Gross income minus child care cost is less than 185 percent of the federal poverty income level;

d. The reporting requirements shall have been met no later than the 21st day of the fourth month, the seventh month, and the tenth month; and

e. During the immediately preceding three (3) months the caretaker relative was employed or if unemployed in any one (1) or more months, it was due to involuntary loss of employment, illness or other good cause established to the satisfaction of the Medicaid program.

2. If a family no longer has a dependent child living in the home, Medicaid for family members, except the former dependent child, shall be terminated the last day of the month the family no longer includes a dependent child, with the eligibility for the former dependent child determined in accordance with usual program requirements.

3. If the family's income exceeds the income standard or does not meet the reporting requirements, except for good cause established to the satisfaction of the Medicaid program, the medical assistance shall be terminated the last day of the appropriate reporting month.

(c) Good cause shall exist under the following circumstances:

1. The specified relative was out-of-town for the reporting month;

2. An immediate family member living in the home was institutionalized or died during the reporting month;

3. The assistance group was the victim of a natural disaster including a flood, storm, earthquake or serious fire; or

4. The assistance group moved and reported the move timely, but the move resulted in a delay in receiving or failure to receive the transitional medical assistance report form.

(9) A parent, including a natural or adoptive parent, may be included for assistance in the case of a family with a child.

(a) If a parent is not included in the case, one (1) other caretaker relative may be included to the same extent he would have been eligible in the Aid to Families with Dependent Children Program using the AFDC methodology in effect on July 16, 1996.

(b) A caretaker relative shall include:

1. Grandfather;

2. Grandmother;

3. Brother;

4. Sister;

5. Uncle;

6. Aunt;

7. Nephew;

8. Niece;

9. First cousin; and

10. First cousin once removed;

11. A relative of the half-blood;

12. Preceding generations denoted by prefixes of:

a. Grand;

b. Great;

c. Great-great; or

d. Great-great-great; and

13. A stepfather, stepmother, stepbrother, stepsister; stepgrandmother, stepgrandfather.

(10) An applicant who is deceased shall have eligibility determined in the same manner as if he were alive, in order to pay medical bills during the terminal illness.

(11) Children of the same parent, i.e., a "common" parent, residing in the same household shall be included in the same case unless this acts to preclude eligibility of an otherwise eligible household member. If a family member is pregnant, the unborn child shall be considered as a family member for budgeting purposes.

(12) The following citizenship and residency requirements shall be applicable:

(a) To be eligible for Medicaid, an applicant or recipient shall be a:

1.a. Citizen of the United States; or

b. Effective January 1, 1997, and except as provided in paragraph

(b) of this subsection, a qualified alien admitted for permanent residence; and

2. A resident of Kentucky meeting the conditions for determining state residency under 42 CFR 435.403.

(b) A nonqualified alien shall be eligible for medical assistance under the following circumstances and conditions:

1. Except as provided in subparagraph 2 of this paragraph, an alien shall meet all requirements for receipt of Medicaid.

2. An alien who does not receive a K-TAP or federal supplemental security income (SSI) cash payment shall:

a. Be qualified as a categorically needy recipient; and

b. Meet the income, resource and categorical requirements of the applicable cash assistance program.

3. The alien shall have (or have had within the usual period for retroactive eligibility) an emergency medical condition not related to an organ transplant procedure, defined as a medical condition (including severe pain) in which the absence of immediate medical attention could reasonably be expected to result in placing the patient's health in serious jeopardy, serious impairment to bodily functions or serious dysfunction of any bodily organ or part;

4. Approval of eligibility shall be for a time limited period, with that period to include the month in which the medical emergency began and the next following month, with the added provision that the eligibil-

ity period shall be extended for an appropriate period of time upon presentation to the department of acceptable documentation that the medical emergency will exist for a more extended period of time than is allowed for in the time limited eligibility period; and

5. The Medicaid to which the alien shall be entitled is limited to the medical care and services (including limited follow-up) necessary for the treatment of the emergency medical condition of the alien.

(13) An individual shall be determined eligible for Medicaid for up to three (3) months prior to the month of application if all conditions of eligibility are met and the applicant is not participating in a managed care partnership.

(a) Except as provided in paragraphs (b), (c), and (d) of this subsection, the effective date of Medicaid shall be the first day of the month of eligibility.

(b) For an individual eligible on the basis of unemployment, eligibility shall not exist for the thirty (30) day period following the starting date of the unemployment. In these cases, the effective date of eligibility may be as early as the first day following the end of the thirty (30) day period if all other conditions of eligibility are met.

(c) For an individual eligible on the basis of desertion, a period of desertion shall have existed for thirty (30) days, and the effective date of eligibility shall not precede the first day of the month in which the thirty (30) day period ends.

(d) For an individual eligible on the basis of utilizing his excess income for incurred medical expenses, the effective date of eligibility shall be the day the spend-down liability is met.

(14) Benefits shall be denied to a family for a month in which a legally liable caretaker relative with whom the child is living is, on the last day of the month, participating in a strike, and the individual's needs shall not be considered in determining eligibility for Medicaid for the family if, on the last day of the month, the individual is participating in a strike. The definition of a strike includes a strike or other concerted stoppage of work by employees (including a stoppage by reason of expiration of a collective bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

(15) A responsible relative (but not a child) removed from a family related Medicaid only case due to failure to meet a technical eligibility requirement shall not be eligible for Medicaid as a medically needy individual unless the individual is separately eligible for medical assistance without regard to eligibility as a member of the group from which the individual has been removed.

Section 6. Institutional Status. An individual shall not be eligible for Medicaid:

(1) If a resident or inmate of a nonmedical public institution;

(2) If a patient in a state tuberculosis hospital unless he has reached age sixty-five (65);

(3) If a patient in a mental hospital or psychiatric facility unless he is under age twenty-one (21) or age twenty-two (22) if receiving inpatient services on his 21st birthday or is sixty-five (65) years of age or over unless the individual is participating in Kentucky Medicaid's managed behavioral health care organization; or

(4) If a patient in a nursing facility classified by the Medicaid program as an institution for mental diseases unless the individual has reached age sixty-five (65) unless the individual is participating in Kentucky Medicaid's managed behavioral healthcare organization.

Section 7. Emergency Shelters. An individual (or family group) who is in an emergency shelter for a temporary period of time may be eligible for medical assistance even though the shelter is considered a public institution under certain conditions. These conditions shall be as follows:

(1) The individual or family group shall:

(a) Be a resident of an emergency shelter no more than six (6) months in any nine (9) month period; and

(b) Not be in the facility serving a sentence imposed by the court, or awaiting trial; and

(2) Eligibility for Medicaid shall have existed immediately prior to admittance to the shelter, or it shall exist immediately after leaving the shelter.

Section 8. Application for Other Benefits. (1) As a condition of eligibility for Medicaid, an applicant or recipient shall apply for each annuity, pension, retirement and disability benefit to which he is enti-

tled, unless he can show good cause for not doing so.

(a) Good cause shall be considered to exist when the benefits have previously been denied with no change of circumstances, or the individual does not meet all eligibility conditions.

(b) Annuities, pensions, retirement and disability benefits shall include:

1. Veterans' compensations and pensions;
2. Retirement and survivors disability insurance benefits;
3. Railroad retirement benefits; and
4. Unemployment compensation.

(2) An applicant or recipient shall not be required to apply for federal benefits if the federal law governing that benefit provides that:

(a) The benefit is optional; and

(b) A potential applicant or recipient is not required to apply for the benefit if the applicant or recipient believes that applying for the benefit would be to his disadvantage.

Section 9. Assignment of Rights to Medical Support. By accepting assistance for or on behalf of a child, a recipient shall be deemed to have made an assignment to the Cabinet for Health Services of any medical support owed for the child not to exceed the amount of Medicaid payments made on behalf of the recipient.

Section 10. Third Party Liability as a Condition of Eligibility. (1) Except as provided in subsection (3) of this section, an individual applying for or receiving Medicaid shall be required as a condition of eligibility to cooperate with the Cabinet for Health Services in identifying, and providing information to assist the cabinet in pursuing, any third party who may be liable to pay for care or services available under the Medicaid Program unless the individual has good cause for refusing to cooperate as determined by the cabinet taking into consideration the best interests of the individuals involved.

(2) A failure of the individual to cooperate without good cause shall result in ineligibility of the individual.

(3) A pregnant woman eligible under poverty level standards shall not be required to cooperate in establishing paternity or securing support for her unborn child.

Section 11. Provision of Social Security Numbers. (1) Except as provided in subsections (2) and (3) of this section, each applicant for or recipient of Medicaid shall be required to provide a social security number as a condition of eligibility.

(2) An individual shall not be denied eligibility or discontinued from eligibility due to a delay in receipt of a social security number from the Social Security Administration if appropriate application for the number has been made.

(3) If the specified relative refuses to cooperate with obtaining a social security number for the newborn child or other dependent children, the specified relative shall be ineligible due to failure to meet technical requirements. The newborn child or other dependent shall still be eligible for Medicaid if financial eligibility requirements are met.

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: July 7, 1998

FILED WITH LRC: July 8, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1998 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 1998 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621,



## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

(502) 564-7905, (502) 564-7573 (Fax).

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: Approximately 80,500 individuals eligible for Medicare, 3166 children previously eligible for SSI, approximately 23,000 children aged 14 to 18 years old, and 40 aliens.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$29,900,000 (costs)

2. Continuing costs or savings: \$29,900,000 (costs)

3. Additional factors increasing or decreasing costs:

(b) Reporting and paperwork requirements: We will need to accumulate data regarding the number of qualified individuals served and the amount of federal funds expended.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation regarding qualified individuals (QI's): 100% Federal funds equaling \$3,970,000. Source of funds to be used for implementation and enforcement of administrative regulation regarding the children eligible for the Kentucky Children's Health Insurance Program (KCHIP): Federal and state matching funds. Federal matching funds of 79.26% equaling \$23,698,740 and state matching funds of 20.74% equaling \$6,201,260. State revenues for continued eligibility for the 3166 children losing SSI eligibility and the 40 aliens have been included in the budget since they were already considered as Medicaid eligibles. State funds for the children eligible for KCHIP have also been appropriated in the Cabinet for Health Services' biennial budget.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky: None were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This regulation will allow children who have lost their SSI eligibility to continue receiving Medicaid, and those elderly and disabled individuals whose income meets the criteria will be able to access Medicare benefits.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of Medicaid recipients by preventing access to Medicaid and Medicare benefits by those who are deemed eligible through the provisions included in this administrative regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in

this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. No

3. State the aspect or service of local government to which this administrative regulation relates. None

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollars estimates cannot be determined, provided a brief narrative to explain the fiscal impact of the administrative regulation. None

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et. seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et. seq. Pursuant to PL 105-33, Kentucky must also provide payment for Medicare Part B premiums for individuals who meet the criteria established in this regulation.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

### CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Administration and Development (Amendment)

**907 KAR 1:605. Medicaid procedures for determining initial and continuing eligibility.**

RELATES TO: KRS 205.520, 42 CFR 435.530, 435.531, 435.540, 435.541, 435.914, 435.916, 42 USC 416, 1382c, 1396a, b, d

STATUTORY AUTHORITY: KRS 194.050, 205.520(3), 1998 GA HB 132 [EO-96-862]

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services.] KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with a requirement that may be imposed or opportunity presented by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes provisions relating to determining initial and continuing eligibility for assistance under the Medicaid Program.

Section 1. Definitions. "Partnership" is defined in 907 KAR 1:705.

Section 2. Eligibility Determination Process. (1) Except as provided in subsection (3) of this section, eligibility shall be determined prospectively. To receive or continue to receive assistance, a household shall meet technical and financial eligibility criteria pursuant to this section and Section 3 of this administrative regulation and as established in 907 KAR 1:011, 907 KAR 1:640 and 907 KAR 1:645 for the appropriate month of coverage.

(2) Each decision regarding eligibility or ineligibility for Medicaid shall be supported by facts recorded in the case record.

(a) The applicant or recipient shall be the primary source of information and shall be required to:

1. Furnish verification of financial and technical eligibility as required by 907 KAR 1:011, 907 KAR 1:640, and 907 KAR 1:645; and

2. Give written consent to those contacts necessary to verify or clarify a factor pertinent to the decision of eligibility.

(b) The department may schedule an appointment with an applicant or recipient to receive specified information as proof of eligibility. Failure to appear for the scheduled appointment or to furnish the requested information shall be considered a failure to present adequate proof of eligibility if the applicant or recipient was informed in writing of the scheduled appointment and the required information.

(3) Retroactive eligibility for Medicaid shall be effective no later than the third month prior to the month of application if:

(a) A Medicaid service was received;

(b) Technical and financial eligibility requirements were met as established in 907 KAR 1:011, 907 KAR 1:640 and 907 KAR 1:645; and

(c) 1. The applicant resides in a nonpartnership county; or

2. The applicant resides in a county served by a partnership and meets one (1) of the excluded categories as established in 907 KAR 1:705.

(4) Eligibility for qualified Medicare beneficiary (QMB) coverage shall be effective the month after the month of case approval if technical and financial eligibility requirements were met as established in 907 KAR 1:011, 907 KAR 1:640 and 907 KAR 1:645.

(5) Retroactive eligibility for specified low-income Medicare beneficiary (SLMB) benefits, Medicare qualified individuals (QI) benefits and qualified disabled working individuals shall be effective no later than the third month prior to the month of application if an individual meets technical and financial eligibility requirements as established in 907 KAR 1:011, 907 KAR 1:640 and 907 KAR 1:645. Retroactive eligibility for a qualified individual shall not include months of a prior year.

Section 3. Continuing Eligibility. (1) The recipient shall be responsible for reporting within ten (10) days a change in circumstances which may affect eligibility. In addition, eligibility shall be redetermined:

(a) Every twelve (12) months; or

(b) If a report is received or information is obtained about a change in circumstances.

(2) Pursuant to the waiver granted by the Secretary, United States Department of Health and Human Services, and promulgated as 907 KAR 1:705, a recipient shall have a one (1) time guarantee of six (6) months of eligibility regardless of a loss of technical eligibility for Medicaid during that six (6) month time period if the recipient:

(a) Resides in a county included in a partnership;

(b) Did not meet one (1) of the excluded categories established in 907 KAR 1:705;

(c) Did not receive Medicaid in any of the twelve (12) months preceding participation in a partnership;

(d) Participated in a partnership for less than six (6) months;

(e) Continued to reside in a partnership region during the guaranteed six (6) month eligibility period; and

(f) Is not an:

1. Incarcerated recipient;

2. Alien who is eligible for emergency Medicaid; or

3. A recipient requesting discontinuance of Medicaid.

Section 4. Determination of Incapacity or Permanent and Total Disability. (1) Except as provided in subsections (2) and (3) of this section, a determination that a parent with whom the needy child lives is incapacitated, or that the individual requesting Medicaid due to dis-

ability is both permanently and totally disabled, shall be made by the medical review team following review of both medical and social reports.

(2) A parent shall be considered incapacitated without a determination from the medical review team if:

(a) The parent declares physical inability to work;

(b) The worker observes some physical or mental limitation; and

(c) The parent:

1. Is receiving supplemental security income (SSI);

2. Is age sixty-five (65) or over;

3. Has been determined to meet the definition of blindness or permanent and total disability as contained in 42 USC 1382c or 416 by either the Social Security Administration or the medical review team;

4. Has previously been determined to be incapacitated or permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction without a reexamination requested and there is no visible improvement in condition;

5. Is receiving retirement, survivors, and disability insurance (RSDI) benefits, federal black lung benefits, or railroad retirement benefits based on disability as evidenced by an award letter;

6. Is receiving Veterans Administration (VA) benefits based on 100 percent disability, as verified by an award letter; or

7. Is currently hospitalized and a statement from the attending physician indicates that incapacity will continue for at least thirty (30) days. If application was made prior to the admission, the physician shall indicate if incapacity existed as of the application date.

(3) An individual shall be considered permanently and totally disabled without a determination from the medical review team if the individual:

(a) Receives RSDI or railroad retirement benefits based on disability; or

(b) Received SSI based on disability during a portion of the twelve (12) months preceding the application month and discontinuance was due to income or resources, not to improvement in physical condition; or

(c) Has been determined to meet the definition of blindness or permanent and total disability as contained in 42 USC 416 or 1382C by the Social Security Administration; or

(d) Has previously been determined to be permanently and totally disabled by the medical review team, hearing officer, appeal board, or court of proper jurisdiction without a reexamination requested and there is no visible improvement in condition.

(4)(a) A child who was receiving supplemental security income benefits on August 22, 1996 and who, but for the change in definition of childhood disability established by 42 USC 1396a(a)(10) would continue to receive SSI, shall continue to meet the Medicaid definition of disability.

(b) If a redetermination is necessary, and in accordance with 904 KAR 2:470, the definition of childhood disability effective on August 22, 1996 shall be used.

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: July 7, 1998

FILED WITH LRC: July 8, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1998 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 1998 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621,

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

(502) 564-7905, (502) 564-7573 (Fax).

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: Approximately 80,500 individuals eligible for Medicare; and 3166 children who previously received SSI.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$0. All funds appropriated for the provisions in this regulation will be provided by the Health Care Financing Administration.

2. Continuing costs or savings: \$0

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: We will need to accumulate data regarding the number of qualified individuals served and the amount of federal funds expended.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation regarding qualified individuals (QI's): 100% federal funds equaling \$3,970,000. Funds for continued eligibility for the 3166 children losing SSI eligibility and the 40 aliens have been included in the budget since they were already considered as Medicaid eligibles.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide

(b) Kentucky: None were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This regulation will allow children who have lost their SSI eligibility to continue receiving Medicaid, and those elderly and disabled individuals whose income meets the criteria will be able to access Medicare benefits.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of Medicaid recipients by preventing access to Medicaid and Medicare benefits by those who are deemed eligible through the provisions included in this administrative regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be impli-

cated as well as Sections 2 and 3 of the Kentucky Constitution.

### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. No

3. State the aspect or service of local government to which this administrative regulation relates. None

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollars estimates cannot be determined, provided a brief narrative to explain the fiscal impact of the administrative regulation. None

### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et. seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et. seq. Pursuant to PL 105-33, Kentucky must also provide payment for Medicare Part B premiums for individuals who meet the criteria established in this regulation.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

### CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Administration and Development (Amendment)

#### 907 KAR 1:640. Income standards for Medicaid.

RELATES TO: KRS 205.520

STATUTORY AUTHORITY: KRS 194.050, 42 CFR 435, 42 USC 1396a, b, d, 1998 GA HB 132

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services [Human Resources] has responsibility to administer the Medicaid Program in accordance with Title XIX of the Social Security Act. KRS 205.520 authorizes [empowers] the cabinet, by administrative regulation, to comply with any requirement that may be imposed or opportunity presented by federal law for the provisions of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes [sets forth] the income standards by which eligibility is determined.

Section 1. Definitions. (1) "ABD" means an individual who is aged, blind, and disabled.

(2) "AFDC" means the Aid to Families with Dependent Children Program as it existed on July 16, 1996.

(3) "Dependent child" means a child who is deprived of parental support due to death, incapacity, or absence of a parent and is under the age of eighteen (18) or under age nineteen (19) if in high school or the same level of vocational or training school and expected to graduate before or during the month of their 19th birthday.

(4) "Incapacity" means any condition of mind or body making a parent physically or mentally unable to provide the necessities of life

for a child.

(5) "Income" means money received from statutory benefits (Social Security, Veteran's Administration pension, black lung benefits, railroad retirement benefits, etc.), pension plans, rental property, investments, or wages for labor or services.

(6) "Minor parent" means a parent under the age of twenty-one (21).

(7) "Lump sum income" means money received at one (1) time which is normally considered as income, e.g., accumulated back payments from Social Security, unemployment insurance and workman's compensation, backpay from employment, money received from insurance settlements, gifts, inheritances, lottery winnings, noncontinuing proceeds from bankruptcy proceedings, monies withdrawn from IRA's, KEOGH plans, deferred compensation, tax deferred retirement plans, and other tax deferred assets.

(8) "SSI" means supplemental security income program.

Section 2. Income Limitations. (1) For the medically needy as described in 907 KAR 1:011, income shall be determined by comparing adjusted income as defined in Section 3 of this administrative regulation, of the applicant, applicant and spouse, or applicant, spouse and minor dependent children with the following scale of income protected for basic maintenance:

Size of Family	Annual	Monthly
1	\$ 2,600	\$ 217
2	3,200	267
3	3,700	308
4	4,600	383
5	5,400	450
6	6,100	508
7	6,800	567

For each additional member, \$720 annually or sixty (60) dollars monthly shall be added to the scale.

(2) The following special factors shall be applicable for pregnant women, infants and children eligible pursuant to 42 USC 1396a(e):

(a) Pregnant women and children under age one (1) shall have family income not exceeding 185 percent of the official poverty income guidelines.

(b) Children age one (1) or over but under age six (6) shall have family income not exceeding 133 percent of the official poverty income guidelines.

(c) Children born after September 30, 1983, who have attained six (6) years of age but have not attained nineteen (19) years of age shall have family income not exceeding 100 percent of the official poverty income guidelines.

(d) Pregnant women, infants and children who would be eligible under provisions of 42 USC 1396a(1) of the Social Security Act except for income in excess of the allowable standard shall not become eligible by spending down (described in Section 9 of this administrative regulation) to the official poverty guidelines;

(e) Changes of income that occur after the determination of eligibility of a pregnant woman shall not affect the pregnant woman's eligibility through the remainder of the pregnancy including the postpartum period which ends at the end of the month containing the 60th day of a period beginning on the last day of her pregnancy.

(3) The following special income limits and provisions shall be applicable for determinations of eligibility of qualified Medicare beneficiaries, specified low-income Medicare beneficiaries, [and] qualified disabled working individuals, and qualified individuals.

(a) Qualified Medicare beneficiaries shall have income not exceeding 100 percent of the official poverty income guidelines.

(b) Specified low-income Medicare beneficiaries shall have income greater than 100 percent of the official poverty income guidelines but not to exceed 120 percent of the official poverty income guidelines.

(c) Qualified individuals are divided into two (2) groups:

1. Group one (1) shall have income greater than 120 percent of the official poverty income guidelines but less than or equal to 135 percent of the official poverty income guidelines.

2. Group two (2) shall have income greater than 135 percent of the official poverty income guidelines but less than or equal to 175

percent of the official poverty income guidelines.

(d) Qualified disabled working individuals shall have income not exceeding 200 percent of the official poverty income guidelines.

(4) The official poverty income guidelines as referenced in this section shall be those promulgated by the Department of Health and Human Services, United States Government, and revised annually, and the updated official poverty guidelines to be used for a year shall be the latest poverty guidelines available as of March 1 of the particular state fiscal year.

(5) Income shall be limited to the allowable amounts for the SSI Program for:

(a) A child who lost eligibility for supplemental security income benefits due to the change in the definition of childhood disability as established in 42 USC 1396a(a)(10);

(b) A person with hemophilia who received a class action settlement as established in 42 CFR 435.122.

(6) Income shall be limited to the allowable amounts for the State Supplementation Program for a pass through recipient as established in 42 CFR 435.135.

Section 3. Income Disregards. In comparing income with the scale as contained in Section 2 of this administrative regulation, gross income shall be adjusted as follows:

(1) In AFDC related Medicaid cases, the standard work related expenses of adult members and out-of-school youth shall be deducted from gross earnings. For those with either full-time or part-time employment the standard work expense deduction shall be ninety (90) dollars per month. All earnings of an in-school child shall be disregarded.

(2) In AFDC related Medicaid cases, child care as a work expense shall be allowed for child(ren) who are living in the home of the caretaker and is related to the caretaker in the appropriate degree as defined by the AFDC Program for full-time and part-time employment. The dependent child care work expense shall be deducted after all other disregards have been applied. The child care work expense allowed shall not exceed, per month, \$200 for full-time or part-time employment per child under age two (2), and \$175 for full-time employment or \$150 for part-time employment per child age two (2) and above and for each incapacitated adult.

(3) In ABD Medicaid cases, income disregards shall be those applicable in the federal SSI program.

Section 4. Income of the Stepparent or Parent of a Minor Parent referred to as a "Grandparent". An incapacitated stepparent's income, or a grandparent's income, shall be considered in the same manner as for a parent if the stepparent or grandparent is included in the family case. If the stepparent or grandparent living in the home is not being included in the family case, the stepparent's gross income shall be considered available to the spouse or the grandparent's gross income shall be considered available to the minor parent in accordance with the policies set forth in this section. The following disregards and exclusions from income shall be applied:

(1) The first ninety (90) dollars of the gross earned income of the stepparent or grandparent who is employed full time or part time.

(2) An amount equal to the appropriate income limitations scale as described in Section 2 of this administrative regulation for the appropriate family size, for the support of the stepparent or grandparent and any other individuals (not including the spouse or minor parent) living in the home but whose needs are not taken into consideration in the Medicaid eligibility determination and are claimed by the stepparent or grandparent as dependents for purposes of determining federal personal income tax liability.

(3) Any amount actually paid by the stepparent or grandparent to individuals not living in the home who are claimed by him as dependents for purposes of determining his personal income tax liability.

(4) Payments by the stepparent or grandparent for alimony or child support with respect to individuals not living in the household.

(5) Income of a stepparent or grandparent receiving SSI.

(6) Verified medical expenses for the stepparent or grandparent and his dependents in the home.

Section 5. Lump Sum Income. (1) For AFDC related Medicaid cases, lump sum income shall be divided by the medically needy income level and prorated over the resultant number of months; deduc-

tions from the lump sum may be allowed for related or extraordinary expenses.

(2) For individuals eligible under the federal poverty level standards specified in Section 2(2)(a), (b) and (c) of this administrative regulation, lump sum income shall be divided by the appropriate standard for the eligible group and prorated over the resultant number of months; deductions from the lump sum may be allowed for related or extraordinary expenses.

(3) For ABD Medicaid cases, lump sum income shall be considered as income in the month received.

Section 6. Income Exclusions. (1) Income of a person who is blind or disabled necessary to fulfill an approved plan for achieving self-support (PASS), impairment related work expense (IRWE) deduction, or the blind work expense (BWE) deduction shall be excluded from consideration.

(2) Payments or benefits from federal statutes, other than SSI benefits, shall be excluded from consideration (as income) if precluded from consideration in SSI determinations of eligibility by the specific terms of the statute.

(3) Cash payments intended specifically to enable applicants or recipients to pay for medical or social services shall not be considered as available income in the month of receipt.

(4) Federal Republic of Germany reparation payments shall not be considered available in the eligibility and posteligibility treatment of income of individuals in nursing facilities or hospitals or who are receiving home and community based services under a waiver.

(5) Social Security cost of living adjustments on January 1 of each year shall not be considered as available income for qualified Medicare beneficiaries, specified low-income Medicare beneficiaries, [and] qualified disabled working individuals and qualified individuals until after the month following the month in which the official poverty guideline promulgated by the Department of Health and Human Services U.S. Government, is published.

(6) Any amount received from a victims compensation fund established by a state to aid victims of crime shall be excluded as income.

(7) Veterans in a nursing facility who are receiving the reduced ninety (90) dollars Veterans Administration (VA) benefit shall have the ninety (90) dollars excluded as income in the Medicaid eligibility determination but the ninety (90) dollar payment shall be considered as income in the posteligibility determination process.

(8) Austrian Social Insurance payments based, in whole or in part, on wage credits granted under paragraphs 500-506 of the Austrian General Social Insurance Act shall be excluded from income consideration.

(9) Individual Retirement Accounts, Keogh plans and other tax deferred assets shall be excluded as income until withdrawn.

(10) Disaster relief assistance shall be excluded as income.

(11) Income which is exempted from consideration for purposes of computing eligibility for the comparable money payment program (AFDC and SSI) shall be exempted from consideration by the cabinet, except that the AFDC earned income disregard (first thirty (30) dollars and one-third (1/3) of the remainder) shall not be allowed in determining eligibility for Medicaid only].

(12) In accordance with 42 CFR 435.122 and Section 4735 of PL 105-33 any payment made from a fund established by a settlement in the case of Susan Walker v. Bayer Corporation or payment made for release of claims in this action shall be excluded as income.

(13) In accordance with 42 CFR 435.122 any payment received by a person with hemophilia from a class action law suit entitled "Factor VIII or IX Concentrate Blood Products Litigation" shall be excluded as income.

Section 7. Consideration of State Supplementary Payments. For an individual receiving state supplementary payments, that portion of the individual's income which is in excess of the basic maintenance standard (contained in Section 2(1) of this administrative regulation) shall be applied to the special need which results in the supplementary payment.

Section 8. Pass-through Cases. (1) Increases in Social Security payments due to cost of living increases but for which the individual would be eligible for SSI benefits or state supplementary payments

shall be disregarded in determining eligibility for Medicaid benefits; these individuals shall remain eligible for the full scope of program benefits with no spend-down requirements (described in Section 9 of this administrative regulation).

(2) For individuals who applied by July 1, 1988, the additional amount specified in 42 USC 1383c(b) shall be disregarded, i.e., that amount of Social Security benefits to which certain widows or widowers were entitled as a result of the recomputation of benefits effective January 1, 1984, and except for which (and subsequent cost of living increases) these individuals would be eligible for federal SSI benefits.

Section 9. Spend-down Provisions. (1) A technically eligible individual or family shall not be required to utilize protected income for medical expenses before qualifying for Medicaid.

(2) Individuals with income in excess of the basic maintenance scale as contained in Section 2(1) of this administrative regulation may qualify for Medicaid in any part of a three (3) month period in which medical expenses incurred have utilized all excess income anticipated to be in hand during that period.

(3) Medical expenses incurred in periods prior to the quarter for which spend-down eligibility is being determined may be used to offset excess income if the medical expenses remain unpaid at the beginning of the quarter and have not previously been used as spend-down expenses.

(4) The incurred costs may be reimbursed under another public program of the state or political subdivision of the state and still be considered incurred costs of the applicant or recipient.

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: July 7, 1998

FILED WITH LRC: July 8, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1998 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 1998 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

#### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: Approximately 80,500 individuals eligible for Medicare benefits, and 3166 children who have lost SSI eligibility.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: \$0

2. Continuing costs or savings: \$0  
 3. Additional factors increasing or decreasing costs: None. All funds appropriated for provisions regarding the qualified individuals are federal funds. The provisions covering the SSI children, persons with hemophilia and those persons who received income received from the settlement of the class action suit titled Susan Walker v. Bayer Corporation are budget neutral since those persons have been included in the budget as eligible individuals.

(b) Reporting and paperwork requirements: The department will need to gather data regarding federal funds expended and the number of new individuals served.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: 100% federal funds equaling \$3,970,000.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky: None were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: citizens with income greater than 120% and less than or equal to 175% of the federal poverty level will receive assistance paying Part B premiums; thereby providing them access to the Medicare Program.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of individuals who are eligible but are unable to access to the Medicare Program and by preventing access to the Medicaid Program by children who have lost SSI eligibility.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. No

3. State the aspect or service of local government to which this administrative regulation relates. None

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full year the regulation is to be in effect. If specific dollars estimates cannot be determined, provided a brief narrative to explain the fiscal impact of the administrative regulation. None

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et. seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the

state must comply with federal requirements contained in 42 USC 1396 et. seq. Pursuant to PL 105-33, Kentucky must also provide payment for Medicare Part B premiums for individuals who meet the criteria established in this regulation.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

#### CABINET FOR HEALTH SERVICES Department for Medicaid Services Division of Administration and Development (Amendment)

#### 907 KAR 1:645. Resource standards for Medicaid.

RELATES TO: KRS 205.520, 42 CFR Part 435, 42 USC 1396a, b.

d STATUTORY AUTHORITY: KRS 194.050, 205.520, EO 96-862, 1998 GA HB 132

NECESSITY, FUNCTION, AND CONFORMITY: The Cabinet for Health Services, Department for Medicaid Services has responsibility to administer the Medicaid Program. [Executive Order 96-862, effective July 2, 1996, reorganized the Cabinet for Human Resources and placed the Department for Medicaid Services and the Medicaid Program under the Cabinet for Health Services.] KRS 205.520 authorizes the cabinet, by administrative regulation, to comply with any [a] requirement that may be imposed, or opportunity presented, by federal law for the provision of medical assistance to Kentucky's indigent citizenry. This administrative regulation establishes the resource standards for determining eligibility for Medicaid.

Section 1. Definitions. (1) "ABD" means an individual who is aged, blind, or has a disability.

(2) "K-TAP" is defined in 907 KAR 1:011.

(3) "Poverty level guidelines" means the official poverty income guidelines promulgated by the Department of Health and Human Services, United States government, pursuant to the provisions of 42 USC 9902(2).

(4) "Real property" means land or an interest in land with an improvement, permanent fixture, mineral, or appurtenance considered to be a permanent part of the land, and a building with an improvement or permanent fixture attached.

(5) "Resources" mean cash money and other personal property or real property that an individual owns; has the right, authority or power to convert to cash; and is not legally restricted for support and maintenance.

(6) "SSI" means the Social Security Administration Program called supplemental security income.

Section 2. Resource Limitations. (1) For the medically needy as defined in 907 KAR 1:011, the upper limit for resources for a family size of one (1) and for family size of two (2) shall be \$2,000 and \$4,000 respectively, with fifty (50) dollars for each additional member.

(2) For a pregnant woman or a child meeting the following criteria, resources shall be disregarded:

(a) A child under age one (1);

(b) A child who is at least age one (1) but under age six (6);

(c) A child who is at least age six (6) but under age nineteen (19) born after September 30, 1983 who is eligible under federal poverty level guidelines.

(3) For a qualified Medicare beneficiary, specified low-income Medicare beneficiary, [or] qualified working disabled individual, or a qualified individual resources shall be limited to twice the allowable amount for the SSI Program.



## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

(4) For a pass-through recipient as defined in 907 KAR 1:640, a person with hemophilia who received a settlement in a class action lawsuit as described in 907 KAR 1:011, and a child who lost supplemental security income eligibility due to the change in definition of childhood disability as established in 907 KAR 1:011 resources shall be limited to the allowable amounts for the SSI Program.

Section 3. Resource Exclusions. (1) A homestead, occupied or abandoned, household, personal effects, and farm equipment without limitation on value shall be excluded from consideration.

(2) Equity of \$6,000 in income-producing, nonhomestead real property, business or nonbusiness, essential for self-support, shall be excluded from consideration. The value of property (including the tools of a tradesperson and the machinery and livestock of a farmer) that is essential for self-support for the individual or spouse, or family group in the instance of a family with a child, and which is used in a trade or business or by the individual or member of the family group as an employee shall be excluded from consideration as a resource.

(3) For a family related Medicaid case, the value of otherwise countable real property (whether income producing or nonincome producing) shall be excluded from consideration for six (6) months if the individual can demonstrate that he is trying to dispose of the property properly. An additional three (3) months shall be allowed for the disposal at the request of the recipient if efforts to dispose of the property within the six (6) month period have been unsuccessful.

(4) For an ABD Medicaid case, real property or nonreal property shall be excluded from consideration if it can be demonstrated that there was a reasonable effort to sell the property at fair market value within a year of application for Medicaid.

(5)(a) Except as provided in paragraph (b) of this subsection, equity of \$4,500 in an automobile shall be excluded from consideration.

(b) If an automobile is used for employment, to obtain medical treatment of a specific or regular medical problem, or if specially equipped for use by an individual with a disability the total value of the automobile shall be excluded.

(6) A burial reserve of up to \$1,500 per individual, which may be in the form of a burial agreement, prepaid burial or similar arrangement, trust fund, life insurance policy, or other identifiable fund shall be excluded from consideration.

(a) The cash surrender value of life insurance shall be considered in determining the total value of burial reserves.

(b) If a burial fund is commingled with another fund, the applicant shall have thirty (30) days to separately identify the burial reserve amount.

(c) Interest or other appreciation of value of an excluded burial reserve or space shall be excluded as a resource if the amount is left to accumulate as a part of the burial reserve or space.

(7) A burial trust, burial space, plot, vault, crypt, mausoleum, urn, casket, or other repository which is customarily and traditionally used for the remains of a deceased person shall be excluded from consideration as a countable resource without regard to value.

(8) For an ABD Medicaid case, proceeds from the sale of a home shall be excluded from consideration for three (3) months from the date of receipt if used to purchase another home. For a family related Medicaid case, proceeds from the sale of a home shall be excluded from consideration for six (6) months from the date of receipt if used to purchase another home.

(9) Resources of an individual who is blind or has a disability shall be excluded if the resources are included in an approved plan for achieving self-support (PASS).

(10) A payment or benefit from a federal statute, other than an SSI benefit, shall be excluded from consideration as a resource if precluded from consideration in an SSI determination of eligibility by the specific terms of the statute.

(11) Disaster relief assistance shall be excluded from consideration.

(12) Cash or in-kind replacement for repair or replacement of an excluded resource shall be excluded from consideration if used to repair or replace the excluded resource within nine (9) months of the date of receipt.

(13) A life interest that a Medicaid applicant or recipient has in real estate or other property shall be excluded from consideration as an available resource.

(14) Real property other than the homestead shall be excluded from consideration if:

(a) The property is jointly owned and its sale would cause loss of housing for the other owner or owners;

(b) Its sale is barred by a legal impediment; or

(c) The owner's reasonable efforts to sell by informing the public of his intention to sell the property at fair market value have been unsuccessful.

(15) A cash payment intended specifically to enable an applicant or recipient to pay for a medical or social service shall not be considered as a resource in the month of receipt or for one (1) calendar month following the month of receipt. If the cash is still being held at the beginning of the second month following its receipt, it shall be considered a resource.

(16) An amount received which is a result of an underpayment or a retroactive payment of benefits from retirement, survivors, and disability insurance benefits or SSI shall be excluded as a resource for the first six (6) months following the month in which the amount is received.

(17) A federal Republic of Germany reparation payment shall not be considered as an available resource.

(18) An amount received from a victim's compensation fund established by a state to aid victims of crime shall be:

(a) Completely excluded as a resource if the individual can show that the amount was paid as compensation for expenses incurred or losses suffered as a result of a crime; or

(b) Excluded as a resource for nine (9) months if the individual can show that the amount was paid for pain and suffering.

(19) An Austrian social insurance payment based on a wage credit granted under paragraphs 500-506 of the Austrian General Social Insurance Act shall be excluded from resource consideration.

(20) An individual retirement account, Keogh plan or other tax deferred asset shall be excluded as a resource until withdrawn.

(21) A payment made from a fund established by a settlement in the case of Susan Walker v. Bayer Corporation or payment made for release of claims in this action shall be excluded from consideration as an available resource.

(22) A payment received from a class action law suit entitled "Factor VIII or IX Concentrate Blood Products Litigation" shall be excluded from consideration as an available resource.

Section 4. Resource Exemptions. A resource which is exempted from consideration for purposes of computing eligibility for the SSI Program shall be exempted from consideration by the department.

DENNIS BOYD, Commissioner

JOHN H. MORSE, Secretary

JOHN H. WALKER, Attorney

APPROVED BY AGENCY: July 7, 1998

FILED WITH LRC: July 8, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1998 at 9 a.m. in the Health Services Auditorium, Health Services Building, First Floor, 275 East Main Street, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 14, 1998 five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mae B. Lewis, Cabinet Regulation Coordinator, Cabinet for Health Services, Office of the Counsel, 275 East Main Street - 4W-C, Frankfort, Kentucky 40621, (502) 564-7905, (502) 564-7573 (Fax).

### REGULATORY IMPACT ANALYSIS

Agency Contact Person: Trish Howard or Karen Doyle

(1) Type and number of entities affected: Approximately 80,500 individuals who are eligible for Medicare and 3166 children who

have lost eligibility for SSI benefits.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None were received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None were received.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None.

Funds expended for the provision covering the qualified individuals are 100% federal funds. Other individuals identified in this regulation are currently included as eligible individuals; therefore, their coverage is budget neutral.

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: \*100% federal funds equaling \$3,970,000.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: To be implemented statewide.

(b) Kentucky: None were received.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No viable alternatives were identified.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: May pose an imminent threat to the public health, safety, or welfare of individuals by preventing access to the Medicare Program and by preventing children who have lost SSI eligibility from having access to the Medicaid Program.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

#### FISCAL NOTE ON LOCAL GOVERNMENT

1. Does this administrative regulation relate to any aspect of a local government, including any service provided by that local government? No

2. State whether this administrative regulation will affect the local government or only a part or division of the local government. No

3. State the aspect or service of local government to which this administrative regulation relates. None

4. Estimate the effect of this administrative regulation on the expenditures and revenues of a local government for the first full

year the regulation is to be in effect. If specific dollars estimates cannot be determined, provided a brief narrative to explain the fiscal impact of the administrative regulation. None

#### FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Pursuant to 42 USC 1396a et. seq., the Commonwealth of Kentucky has exercised the option to establish a Medicaid Program for indigent Kentuckians. Having elected to offer Medicaid coverage, the state must comply with federal requirements contained in 42 USC 1396 et. seq. Pursuant to PL 105-33, Kentucky must also provide payment of Medicare Part B premiums for individuals who meet the criteria established in this regulation.

2. State compliance standards. This administrative regulation does not set compliance standards.

3. Minimum or uniform standards contained in the federal mandate. This administrative regulation does not set minimum or uniform standards.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No. This administrative regulation does not set stricter requirements.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements. No additional standard or responsibilities are imposed.

**KENTUCKY HIGHER EDUCATION  
ASSISTANCE AUTHORITY  
Division of Student Services  
(New Administrative Regulation)**

**11 KAR 4:070. Reports by postsecondary institutions.**

RELATES TO: 1998 Ky. Acts ch. 256, sec. 2(2), ch. 575, sec. 2(15)(b)

STATUTORY AUTHORITY: KRS 164.748(4), 1998 Ky. Acts ch. 256, sec. 1(9), ch. 575, sec. 6(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires KHEAA to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. 1998 Ky. Acts ch. 256, sec. 1(9) requires the authority to establish by administrative regulation procedures for the administration of the Osteopathic Medicine Scholarship Program. 1998 Ky. Acts ch. 575, sec. 6(7) requires the authority to promulgate administrative regulations for the administration of the Commonwealth Merit Scholarship Program. This administrative regulation prescribes a deadline by which postsecondary institutions shall certify compliance with 1998 Ky. Acts ch. 256, sec. 2(2) and ch. 575, sec. 2(15)(b) or submit to the authority the report specified in 1998 Ky. Acts ch. 256, sec. 2(2).

Section 1. Definitions. (1) "Authority" is defined in KRS 164.740(1) and 1998 Ky. Acts ch. 575, sec. 2(4).

(2) "Business school" is defined in KRS 164.740(3).

(3) "College" is defined in KRS 164.740(4).

(4) "Participating institution" is defined in 1998 Ky. Acts ch. 575, sec. 2(15)

(5) "School of nursing" is defined in KRS 164.740(20).

(6) "School of osteopathic medicine" means a postsecondary institution that offers a program accredited in accordance with 1998 Ky. Acts ch. 256, sec. 1(3)(b).

(7) "Vocational school" is defined in KRS 164.740(22).

Section 2. Certification of Compliance. (1) A school of osteopathic medicine or a college, business school, school of nursing, or vocational school shall submit to the authority by August 1 of each year a certification of compliance, signed by the president or chief executive officer of the institution, if it awards student financial assistance from institutional funds in compliance with 1998 Ky. Acts ch. 256, sec. 2(2).

(2) A participating institution shall submit to the authority by August 1 of each year a certification of compliance, signed by the president or chief executive officer of the institution, if it commits financial resources to student financial assistance in compliance with 1998 Ky. Acts ch. 575, sec. 2(15)(b).

Section 3. Report If a school of osteopathic medicine or a college, business school, school of nursing, or vocational school does not award student financial assistance from institutional funds in compliance with 1998 Ky. Acts ch. 256, sec. 2(2), the institution shall submit to the authority by August 1 of each year a report specified in 1998 Ky. Acts ch. 256, sec. 2(2), signed by the president or chief executive officer of the institution.

Section 4. Coordination with Other Agencies. (1) Organizations and agencies responsible for disbursement of funds appropriated by the General Assembly for the purposes of student financial assistance may confirm with the authority after August 1 each year whether a school of osteopathic medicine or a college, business school, school of nursing, or vocational school has submitted to the authority either a certification of compliance or a report specified in 1998 Ky. Acts ch. 256, sec. 2(2).

(2) If a school of osteopathic medicine or a college, business school, school of nursing, or vocational school is subsequently found to have submitted to the authority a false or erroneous certification of compliance or report, the authority shall not be held liable by any individual, organization, or agency for disbursement of funds, appro-

riated by the General Assembly for the purposes of student financial assistance, to students attending that institution in reliance on that certification or report.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: June 26, 1998

FILED WITH LRC: July 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, August 21, 1998 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, August 14, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX # (502) 696-7293.

**REGULATORY IMPACT ANALYSIS**

Agency Contact: Richard F. Casey

(1) Type and number of entities affected: All schools of osteopathic medicine, colleges, business schools, schools of nursing, or vocational schools in the Commonwealth whose students receive funds appropriated by the General Assembly for the purposes of student financial assistance.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: 1998 Ky. Acts ch. 256, sec. 2 prohibits disbursement of funds appropriated by the General Assembly for the purposes of student financial assistance to students enrolled in a program of study at a school of osteopathic medicine or a college, business school, school of nursing, or vocational school, as defined in KRS 164.740, located within the Commonwealth, unless the educational institution awards at least as much student financial assistance from institutional funds to residents of the Commonwealth as the institution awards from institutional funds to nonresidents of the Commonwealth for undergraduate programs of study, excluding reciprocal tuition agreements and athletic scholarships or the institution provides a report to the Kentucky Higher Education Assistance Authority on its headcount enrollment, both resident and nonresident, and the amount of student financial assistance awarded from institutional funds to residents and nonresidents. Similarly, 1998 Ky. Acts ch. 575, sec. 2(15)(b) requires as a condition of participation in the Commonwealth Merit Scholarship Program that an institution continue to commit financial resources to student financial assistance and provide annual documentation to the authority of compliance. This proposed administrative regulation is intended to ensure that evidence of compliance with these requirements in the form of a certification or a report from the institution is available in a central location to all agencies responsible for disbursement of funds appropriated by the General Assembly for the purposes of student financial assistance prior to disbursement of those funds. Therefore, there is no anticipated impact upon the cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments have been received. The administrative regulation is intended to provide evidence of compliance with a minimum of burden to postsecondary institutions by providing annual certification of compliance or reporting to a central location by a date expected to not interfere with the

normal processing of student financial aid funds. Therefore, the anticipated impact upon the cost of doing business is negligible.

(c) Compliance, reporting and paperwork requirements, including facts increasing or decreasing cost (note any effects upon competition) for the:

1. First year following implementation: Postsecondary institutions shall provide by August 1 each year a simple certification, signed by the president of the institution, that the institution continues to commit resources to student financial assistance in compliance with 1998 Ky. Acts, ch. 575, sec. 2(15)(b) and awards its institutional funds for student financial assistance in compliance with 1998 Ky. Acts ch. 256, sec. 2(2) or alternatively comply by submitting the report specified in that section.

2. Second and subsequent years: Same as # 1 above

(3) Effects on the promulgating body:

(a) Direct and indirect costs or savings:

1. First year: The cost associated with implementation of this administrative regulation are deemed negligible. Postsecondary institutions shall provide by August 1 each year a simple certification, signed by the president of the institution, that the institution continues to commit resources to student financial assistance in compliance with 1998 Ky. Acts, ch. 575, Sec. 2(15)(b) and awards its institutional funds for student financial assistance in compliance with 1998 Ky. Acts ch. 256, sec. 2(2) or alternatively comply by submitting the report specified in that section. The costs to the promulgating body are therefore only those of receiving and retaining the certification or applicable report from the institutions.

2. Continuing costs or savings: Same as #1. above

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The promulgating body is responsible for annually receiving and retaining the certification or applicable report from the institutions.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Administrative costs of the promulgating body are funded by agency receipts.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: It is anticipated that institutions whose students receive funds appropriated by the General Assembly for the purposes of student financial assistance will comply with the applicable statutes and this administrative regulation by providing an annual certification or report to avoid loss of funds to their students. Therefore, there is no anticipated economic impact.

(b) Kentucky: Same as (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Potentially numerous postsecondary institutions and state agencies could be affected by the statutory requirements that no funds appropriated by the General Assembly for the purposes of student financial assistance shall be awarded or disbursed to students unless the postsecondary institutions comply with certain requirements for commitment of institutional funds. The only known alternative to verify compliance before funds are awarded or disbursed would have been for each state agency that disburses funds to separately check with each institution. This was considered to place an unnecessary burden on the various postsecondary institutions. The administrative regulation is intended to provide evidence of compliance with a minimum of burden to postsecondary institutions by providing annual certification of compliance or reporting to a central location by a date expected to not interfere with the normal processing of student financial aid funds.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no anticipated impact upon the public health or the environment.

(b) State whether a detrimental effect on the environmental or public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government

policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: There is no known conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no known conflict.

(10) Any additional information or comments: None

(11) Tiering: Was tiering applied? No. 1998 Ky. Acts ch. 256, sec. 2 prohibits disbursement of funds appropriated by the General Assembly for the purposes of student financial assistance to students unless the postsecondary institution complies with certain requirements for expenditure and commitment of institutional funds or the institution provides a report to the Kentucky Higher Education Assistance Authority on its headcount enrollment, both resident and nonresident, and the amount of student financial assistance awarded from institutional funds to residents and nonresidents. Similarly, 1998 Ky. Acts ch. 575, sec. 2(15)(b) requires as a condition of participation in the Commonwealth Merit Scholarship Program that an institution continue to commit financial resources to student financial assistance and provide annual documentation to the authority of compliance. This proposed administrative regulation is intended to ensure that evidence of compliance with these requirements in the form of a certification or a report from the institution is available in a central location to all agencies responsible for disbursement of funds appropriated by the General Assembly for the purposes of student financial assistance prior to disbursement of those funds. Compliance is evidenced either by submitting the statutorily required report or annual certification of compliance. Since the annual certification of compliance is deemed to be of negligible burden, there is no need to establish separate levels of compliance for distinct classes of institutions.

#### KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY (New Administrative Regulation)

#### 11 KAR 14:010. Osteopathic Medicine Scholarship Program application process.

RELATES TO: 1998 Ky. Acts ch. 256 sec. 1

STATUTORY AUTHORITY: KRS 164.748(4), 1998 Ky. Acts ch. 256 sec. 1(9)

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 256, sec. 1(9) establishes the Osteopathic Medicine Scholarship Program and requires the authority to administer the program and to promulgate administrative regulations for administration of the program. This administrative regulation provides procedures for the application process for the Osteopathic Medicine Scholarship Program.

Section 1. Definitions. "Authority" is defined in KRS 164.740(1).

Section 2. (1) The school of osteopathic medicine shall send notification to the authority by July 1 of each year of those students eligible to receive the scholarship.

(2) The list submitted by the school of osteopathic medicine shall contain the eligible student's name, address, Social Security number, and academic year for which the promissory note is applicable.

Section 3. Promissory Notes. (1) Following receipt of the list of eligible students described in Section 1 of this administrative regulation, the authority shall deliver to the school of osteopathic medicine a promissory note for signature by the student eligible to receive an osteopathic medicine scholarship.

(2) The promissory note shall be signed by the student in the presence of an official of the school of osteopathic medicine. The student shall present to the school official adequate identification, including a driver's license, a school identification, or other item of identification satisfactory to the school official to ensure that the person signing the promissory note is the student named on the promissory note. After the student has signed the promissory note, a copy shall be retained by the student for his records and the original

shall be returned by the school to KHEAA.

(3) The school of osteopathic medicine shall deliver to the authority with the original signed promissory note for a student eligible to receive the scholarship a data sheet containing the following information necessary to process the promissory notes for the scholarship:

- (a) Student's complete name;
- (b) Student's Social Security number;
- (c) Student's current home address including county;
- (d) Student's current home telephone number;
- (e) Student's anticipated graduation date;
- (f) Student's date of birth;
- (g) Student's gender;
- (h) Academic classification; and
- (i) Name, permanent address, and telephone number of contact persons (one of whom shall be a relative of the student) expected to know the student's whereabouts after the student ceases enrollment.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: June 26, 1998

FILED WITH LRC: July 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, August 21, 1998 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, August 14, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX # (502) 696-7293.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Richard F. Casey

(1) Type and number of entities affected: It is anticipated that up to 360 students will receive awards to attend Pikeville College School of Osteopathic Medicine. The scholarship award will be equal to the difference between the amount of tuition charged by the Pikeville College School of Osteopathic Medicine and the amount of tuition charged by the medical schools at the University of Kentucky and the University of Louisville. For the 1998 Fiscal Year, it is anticipated that the scholarship award will be \$12,850.00 per student. It is anticipated that during the first year following implementation of this administrative regulation 120 students will be eligible to receive awards under this program.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: This administrative regulation only sets forth the procedures for applying for a scholarship award under the Osteopathic Medicine Scholarship Program. There is no anticipated impact of this particular administrative regulation upon the cost of living or employment in the state. The program, however, will reduce the direct out-of-pocket expenditure by residents of the Commonwealth who wish to attend the Pikeville College School of Osteopathic Medicine and plan to practice osteopathic medicine in the Commonwealth.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent from the public comments received: This administrative regulation only sets forth the procedures for applying for a scholarship award under the program. There is no anticipated impact of this particular administrative regulation upon the cost of doing business in the state.

(c) Compliance, reporting and paperwork requirements, includ-

ing factors increasing or decreasing cost (note any effects upon competition) for the:

1. First year following implementation: The osteopathic school of medicine shall submit to Kentucky Higher Education Assistance Authority by July 1 of each year a list of students eligible to receive monies under the Osteopathic Medicine Scholarship Program. The students must be enrolled at the school and be Kentucky residents. After receipt of this list, a promissory note for each student shall be prepared and submitted to the school for each student's signature. It is anticipated that during the first year following implementation of this administrative regulation 120 students will be eligible to receive awards under this program. The school shall also submit to the authority a data sheet, for each student that signs a promissory note, containing the information necessary to process the promissory notes and personal information to assist in later locating the student if collection of repayment is necessary.

2. Second and subsequent years: The number of students eligible to receive awards under this program will increase by 60 students each year until a maximum number of 360 students are eligible for this award. This will result in a negligible increase in the volume of the paperwork required both for the authority and for the Pikeville College School of Osteopathic Medicine.

(3) Effect on the promulgating body: This administrative regulation sets forth the process for applying for a scholarship award under this program. Therefore, the impact on the promulgating body is anticipated to be a minimal increase in paperwork.

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation only sets forth the process for applying for a scholarship award under this program. The impact on the promulgating body is anticipated to be minimal. No extra staff has been employed to administer the authority's functions with respect to this program. Costs of administering the program will be absorbed by the authority.

2. Continuing costs or savings: Same as year above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: See # (2)(c) 1 and 2 above. This administrative regulation will result in a minimal increase in paperwork requirements for the promulgating body.

(4) Assessment of anticipated effect on state and local revenues: This particular administrative regulation will have no effect on state and local revenues. The Osteopathic Medicine Scholarship Program is funded from a portion of Coal Severance Tax receipts.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funding for the program shall be transferred to a special trust fund from the coal severance tax revenues levied under KRS 143.020 in an amount that permits each recipient eligible under this program to be awarded a scholarship. No more than 4% of the coal severance tax revenues levied under KRS 143.020 and collected annually shall be transferred to the trust fund. The trust fund for this program may also receive state appropriations, gifts and grants from public and private sources, and federal funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: No public comments have been received. No public comments have been received. This administrative regulation only sets forth the procedures for applying for a scholarship award under this program. There is no anticipated economic impact of this particular administrative regulation. The program, as a whole, is anticipated to have a positive, but unquantified, economic impact upon the geographical area of Eastern Kentucky where the award recipients attend school, resulting from a flow of funds disbursed to the recipients to meet education costs at the Pikeville College School of Osteopathic Medicine.

(b) Kentucky: No public comments have been received. This administrative regulation only sets forth the procedures for applying for a scholarship award under this program. There is no anticipated economic impact of this particular administrative regulation. The program, as a whole, is anticipated to have a positive, but unquantified, economic impact upon the state, resulting in a flow of funds disbursed to the recipients to meet educational costs at the Pikeville College School of Osteopathic Medicine. Enrollment may be slightly

increased to the extent of an undetermined number of award recipients that would otherwise not have enrolled absent the tuition award.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods for the application process were considered. The requirements outlined in the administrative regulation are consistent with procedures familiar to both the Pikeville College School of Osteopathic Medicine and the authority for the administration of other student financial assistance programs and are, therefore, anticipated to facilitate administration of this program for all concerned.

(8) Assessment of Expected Benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This particular administrative regulation only sets forth the procedures for the application process for this program. There is no anticipated impact of this particular administrative regulation upon public health and environmental welfare. However, the program, as a whole, is anticipated to have a positive, but unquantified, impact on improving the general public health of the Commonwealth and particularly Eastern Kentucky by making it possible for more individuals to become licensed doctors and encouraging those doctors to practice in the Commonwealth.

(b) State whether a detrimental effect on the environmental or public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: There is no anticipated impact of this particular administrative regulation upon public health and environmental welfare.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: There is no known conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no known conflict.

(10) Any additional information of comments: None

(11) Tiering: Was tiering applied? No. The concept of tiering is not applicable to this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute and, consequently, does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

**KENTUCKY HIGHER EDUCATION  
ASSISTANCE AUTHORITY  
(New Administrative Regulation)**

**11 KAR 14.020. Osteopathic Medicine Scholarship Program  
award determination.**

RELATES TO: 1998 Ky. Acts ch. 256, sec. 1

STATUTORY AUTHORITY: KRS 164.748(4), 1998 Ky. Acts ch. 256, sec. 1(9)

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 256 establishes the Osteopathic Medicine Scholarship Program and requires the authority to administer the program and promulgate administrative regulations for administration of the program. This administrative regulation provides procedures for the priority of awarding scholarships if funds are insufficient to honor all requests.

Section 1. Insufficient Funds. If funds are insufficient to award full scholarships to all applicants, a ranking system shall be used in awarding the scholarships. The full scholarship shall be awarded first to those students closest to completing the Osteopathic Medicine Scholarship Program.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: June 26, 1998

FILED WITH LRC: July 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, August 21, 1998 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, August 14, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX # (502) 696-7293.

**REGULATORY IMPACT ANALYSIS**

Agency Contact: Richard F. Casey

(1) Type and number of entities affected: It is anticipated that up to 360 students will receive scholarship awards under this program to attend the Pikeville College School of Osteopathic Medicine. The scholarship award will be equal to the difference between the amount of tuition charged by the Pikeville College School of Osteopathic Medicine and the amount of tuition charged by the medical schools at the University of Kentucky and the University of Louisville. For the 1998 Fiscal Year, it is anticipated that the scholarship award will be \$12,850.00 per student. It is anticipated that during the first year following implementation of this administrative regulation 120 students will be eligible to receive awards under this program.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments have been received. This administrative regulation only sets forth the priority for awarding scholarships under this program if funds are insufficient to honor all requests. The program, however, will reduce the direct out-of-pocket expenditure by residents of the Commonwealth who wish to attend the Pikeville College School of Osteopathic Medicine and plan to practice osteopathic medicine in the Commonwealth.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent from the public comments received: This administrative regulation only sets forth the priority for awarding scholarships under this program if funds are insufficient to honor all requests. There is no anticipated impact of this particular administrative regulation upon the cost of doing business in the state.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing cost (note any effects upon competition) for the:

1. First year following implementation: There are no compliance or reporting requirements imposed by this particular administrative regulation. This administrative regulation only sets forth the priority for awarding scholarships under this program if funds are insufficient to honor all requests.

2. Second and subsequent years: See #1 above.

(3) Effect on the promulgating body:

(a) Direct and indirect costs or savings: This administrative regulation sets forth the priority of awarding scholarships under this program if funds are insufficient to honor all requests. Therefore, there is no anticipated impact on the promulgating body.

1. First year: The impact on the promulgating body is anticipated to be minimal. No extra staff has been employed to administer the authority's functions with respect to this program. Costs of administering the program will be absorbed by the authority.

2. Continuing costs or savings: Same as #1 above.

3. Additional factors increasing or decreasing costs: None.



(b) Reporting and paperwork requirements: This administrative regulation will result in a no increase in paperwork requirements for the authority.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no effect on state and local revenues. If funds available through the coal severance tax are not sufficient to honor all requests for scholarships under this program, the scholarships will be awarded to those closest to graduation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funding for the program shall be transferred to a special trust fund from the coal severance tax levied under KRS 143.020 in an amount that permits each recipient eligible under this program to be awarded a scholarship. No more than 4% of the coal severance tax revenues levied under KRS 143.020 and collected annually shall be transferred to the trust fund. The trust fund for this program may also receive state applications, gifts and grants from public and private sources, and federal funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: No public comments have been received. This administrative regulation only sets forth the priority for awarding scholarships under this program if funds are insufficient to honor all requests. There is no anticipated economic impact of this particular administrative regulation. The program, as a whole, is anticipated to have a positive, but unquantified, economic impact upon the geographical area where the award recipients attend school, resulting from a flow of funds disbursed to the recipients to meet education costs at the Pikeville College School of Osteopathic Medicine.

(b) Kentucky: No public comments have been received. This administrative regulation only sets forth the priority for awarding scholarships under this program if funds are insufficient to honor all requests. There is no anticipated economic impact of this particular administrative regulation. The program, as a whole, is anticipated to have a positive, but unquantified, economic impact upon the state, resulting in a flow of funds disbursed to the recipients to meet educational costs at the Pikeville College School of Osteopathic Medicine. Enrollment at the Pikeville College School of Osteopathic Medicine may be slightly increased to the extent of an undetermined number of award recipients that would otherwise not have enrolled absent the tuition award.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods appeared to be available for the priority for awarding scholarships under this program if funds are insufficient to honor all requests. The statute provides only that the scholarship amount shall be the difference between the tuition charged at the school of osteopathic medicine and certain public medical schools. It does not provide for variable scholarship amounts or authorize proration of the scholarship amount. Likewise, the statute does not provide for differentiation among applicants based upon academic performance or financial need. Since the school of osteopathic medicine provides a list of eligible students to the authority and the authority does not directly receive individual student applications, differentiation based on date of application is not a viable alternative.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation only sets forth the priority for awarding scholarships under this program if funds are insufficient to honor all requests. There is no anticipated impact of this particular administrative regulation upon public health and environmental welfare. However, the program, as a whole, is anticipated to have a positive, but unquantified, impact on improving the general public health of the Commonwealth and particularly Eastern Kentucky by making it possible for more individuals to become licensed doctors and encouraging those doctors to practice in the Commonwealth.

(b) State whether a detrimental effect on the environmental or public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: There is no anticipated impact of this particular administrative regulation upon public health and environmental welfare.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: There is no known conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no known conflict.

(10) Any additional information of comments: None

(11) Tiering: Was tiering applied? No. The concept of tiering is not applicable to this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute and, consequently, does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

# KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY (New Administrative Regulation)

## 11 KAR 14:030. Osteopathic Medicine Scholarship Program disbursement process.

RELATES TO: 1998 Ky. Acts ch. 256, sec. 1

STATUTORY AUTHORITY: KRS 164.748(4), 1998 Ky. Acts ch. 256, sec. 1(9)

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 256 establishes the Osteopathic Medicine Scholarship Program and requires the authority to administer the program and promulgate administrative regulations for administration of the program. This administrative regulation provides procedures for disbursement of the monies awarded under the Osteopathic Medicine Scholarship Program.

Section 1. Definitions. "Authority" is defined in KRS 164.740(1).

Section 2. Disbursement of Funds. (1) Within thirty (30) days following receipt by the authority of the original signed promissory notes for all students eligible to receive the osteopathic medicine scholarship, the monies awarded under the Osteopathic Medicine Scholarship Program shall be transmitted directly to the school of osteopathic medicine in the form of a single check made payable to the school of osteopathic medicine on behalf of all students eligible to receive the osteopathic medicine scholarship or by electronic funds transfer. The authority shall also send to the school a check register containing each recipient's name and social security number. The recipient shall sign the check register in the presence of an official of the school to acknowledge disbursement of the osteopathic medicine scholarship. The school shall retain a copy of the check register for its records and forward the original register and any undisbursed osteopathic medicine scholarship funds to the authority not later than thirty (30) days following receipt of the check register and the funds.

(2) The student shall present to the school official adequate identification, including a driver's license, a school identification, or other item of identification satisfactory to the school official to ensure that the person signing the check register is the student named on the promissory note.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: June 26, 1998

FILED WITH LRC: July 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, August 21, 1998 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday,

August 14, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX # (502) 696-7293.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Richard F. Casey

(1) Type and number of entities affected: It is anticipated that up to 360 students will receive scholarship awards to attend the Pikeville College School of Osteopathic Medicine. The scholarship award will be equal to the difference between the amount of tuition charged at the Pikeville College School of Osteopathic Medicine and the amount of tuition charged by the medical schools at the University of Kentucky and the University of Louisville. It is anticipated that during the first year following the implementation of this administrative regulation 120 students will be eligible to receive scholarship awards under this program. For the 1998 Fiscal Year it is anticipated that the scholarship award will be \$12,850.00 per student.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: This administrative regulation only sets forth the procedures for the disbursement of the monies awarded under this program. There is no anticipated impact of this particular administrative regulation upon the cost of living or employment in the state. This program, however, will reduce the direct out-of-pocket expenditure by residents of the Commonwealth who wish to attend the Pikeville College School of Osteopathic Medicine and plan to practice osteopathic medicine in the Commonwealth.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent from the public comments received: This administrative regulation only sets forth the procedures for the disbursement of the monies awarded under this program. There is no anticipated impact of this particular administrative regulation upon the cost of doing business in the state.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing cost (note any effects upon competition) for the:

1. First year following implementation: The monies awarded under the Osteopathic Medicine Scholarship Program will be transmitted directly to the school in the form of a check made payable to the school of osteopathic medicine or by electronic funds transfer. Along with the checks, the school will receive a check register containing each recipient's name and social security number. The recipient shall sign the check register to verify receipt of the check. The monies awarded under the Osteopathic Medicine Scholarship Program shall be disbursed annually to the recipient within 30 days of receipt by the authority of the signed original promissory note.

2. Second and subsequent years: It is anticipated that the number of students eligible to receive scholarship awards under this program will increase by 60 students each year until a maximum number of 360 students are eligible for this award. This will result in a minimal increase in the volume of paperwork for the Pikeville College School of Osteopathic Medicine.

(3) Effect on the promulgating body: This administrative regulation sets forth the procedures for disbursement of the monies awarded under this program. Therefore, the impact on the promulgating body is anticipated to be a minimal increase in paperwork.

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation only sets forth the process for disbursement of the monies awarded under this program. The impact on the promulgating body is anticipated to be

minimal. No extra staff has been employed to administer the authority's functions with respect to this program. Costs of administering the program will be absorbed by the authority. By disbursing the scholarship benefits through a single check made payable to the school or by electronic funds transfer, the authority will achieve cost efficiency in processing and postage over issuance of individual checks to each eligible student.

2. Continuing costs or savings: Same as #1 above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Paperwork requirements for the authority involve annual issuance of a check payable to the school for the aggregate amount of scholarships received by the eligible students under this program and preparation and submission to the school of a check register containing each recipient's name and Social Security number. Additionally, the authority will need to update its computer records from the check register returned by the school and retain the check register.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funding for this program shall be transferred to a special trust fund from the coal severance tax revenues levied under KRS 143.020 in an amount that permits each student eligible under this program to be awarded a scholarship. No more than 4% of the coal severance tax revenues levied under KRS 143.020 and collected annually shall be transferred to the trust fund. The trust fund for this program may also receive state appropriations, gifts and grants from public and private sources, and federal funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation only sets forth the procedures for the disbursement of monies awarded under this program. There is no anticipated economic impact of this particular administrative regulation. The program, as a whole, is anticipated to have a positive, but unquantified, economic impact upon the geographical area where the award recipients attend school, resulting from a flow of funds disbursed to the recipients to meet educational costs at the Pikeville College School of Osteopathic Medicine.

(b) Kentucky: This administrative regulation only sets forth the procedures for the disbursement of monies awarded under this program. There is not anticipated economic impact of this particular administrative regulation. The program, as a whole, is anticipated to have a positive, but unquantified, economic impact upon the state, resulting in a flow of funds disbursed to the recipients to meet educational costs at the Pikeville College School of Osteopathic Medicine. Enrollment may be slightly increased to the extent of an undetermined number of award recipients that would otherwise not have enrolled absent the tuition award.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Disbursement of scholarship funds by individual checks issued payable to the eligible student and mailed either to each student or to the school for delivery to and endorsement by the eligible student was considered to be less efficient and more costly than the chosen method. No other alternative methods for disbursement of monies awarded under this program were considered. The procedures outlined in the administrative regulation are consistent with procedures familiar to both the Pikeville College School of Osteopathic Medicine and the authority for the administration of other student financial assistance programs and are, therefore, anticipated to facilitate administration of this program for all concerned.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation only sets forth the procedures for the disbursement of monies awarded under this program. There is no anticipated impact of this particular administrative regulation upon public health and environmental welfare.

(b) State whether a detrimental effect on the environmental or public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect:

There is no anticipated impact of this particular administrative regulation upon public health and environmental welfare.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: There is no known conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no known conflict.

(10) Any additional information of comments: None

(11) Tiering: Was tiering applied? No. The concept of tiering is not applicable to this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute and, consequently, does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

**KENTUCKY HIGHER EDUCATION  
ASSISTANCE AUTHORITY  
(New Administrative Regulation)**

**11 KAR 14:040. Osteopathic Medicine Scholarship Program  
overawards and refunds.**

RELATES TO: 1998 Ky. Acts ch. 256

STATUTORY AUTHORITY: KRS 164.748(4), 1998 Ky. Acts ch. 256, sec. 1(9)

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 256 establishes the Osteopathic Medicine Scholarship Program and requires the authority to administer the program and promulgate administrative regulations for administration of the program. This administrative regulation provides procedures for refund to KHEAA of monies paid under the Osteopathic Medicine Scholarship Program.

Section 1. Definitions. (1) "Authority" is defined in KRS 164.740(1).

(2) "Federal act" is defined in KRS 164.740(9).

Section 2. General. If an osteopathic medicine scholarship recipient fails to enroll in or officially withdraws from an accredited osteopathic medicine program, the authority shall be due a refund of monies paid to the school on behalf of that student.

Section 3. Failure to Enroll. If an osteopathic medicine scholarship recipient fails to enroll in or officially withdraws from an accredited osteopathic medicine program prior to the first day of classes, the scholarship award will be deemed an overaward and a full refund of the monies to the authority shall be required, notwithstanding any policy of the school to the contrary.

Section 4. Withdrawal after Classes Begin. (1) If an osteopathic medicine scholarship recipient officially withdraws from the osteopathic medicine program after the beginning of classes, the amount of refund shall be determined in accordance with the school's refund and repayment policy relative to financial aid funds.

(2) This policy shall be published and consistently administered. The policy shall be filed with the authority. The authority shall be notified in writing of any change in the policy. Allocation of refund among the Osteopathic Medicine Scholarship Program and other student financial assistance programs shall be consistent with allocation of refund and repayment among federal student financial assistance programs administered under the federal act.

Section 5. Unofficial Withdrawal. If an osteopathic medicine scholarship recipient unofficially withdraws from an accredited osteo-

pathic medicine program at any time, the authority shall not seek from the school a refund of the monies paid under the scholarship. The osteopathic medicine scholarship recipient shall be responsible for immediate repayment of the entire amount of monies paid under the scholarship as well as any interest that may be applicable.

Section 6. Refund of an amount due by the school shall be transmitted to the authority and shall be accompanied by the student's name and Social Security number, the reason for the refund, date of enrollment status change, the semester and year, and the calculation used for determining the refund.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: June 26, 1998

FILED WITH LRC: July 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, August 21, 1998 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, August 14, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX # (502) 696-7293.

**REGULATORY IMPACT ANALYSIS**

Agency Contact: Richard F. Casey

(1) Type and number of entities affected: It is anticipated that up to 360 students will receive awards to attend the Pikeville College School of Osteopathic Medicine. The scholarship award will be equal to the difference between the amount of tuition charged by the Pikeville College School of Osteopathic Medicine and the amount of tuition charged by the medical schools at the University of Kentucky and the University of Louisville. It is anticipated that during the first year following implementation of this administrative regulation 120 students will be eligible to receive awards under this program. For the 1998 Fiscal Year it is anticipated that the scholarship award will be \$12,850.00 per student.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: This administrative regulation only sets forth the procedure for the refund to the authority of monies paid under this program. There is no anticipated impact of this particular administrative regulation upon the cost of living or employment in this state. The program, however, will reduce the direct out-of-pocket expenditure by residents of the Commonwealth who wish to attend the Pikeville College School of Osteopathic Medicine and plan to practice osteopathic medicine in the Commonwealth.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent from the public comments received: This administrative regulation only sets forth the procedures for the refund to the authority of monies paid under this program. The requirements are consistent with requirements upon the Pikeville College School of Osteopathic Medicine under federal student financial assistance programs administered by the school. Therefore, there is no anticipated impact of this particular administrative regulation upon the cost of doing business in the state.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing cost (note any effects upon competition) for the:

1. First year following implementation: The amount of any refund

shall be determined in accordance with the school's refund and repayment policy relative to financial aid funds. The policy shall be filed with the authority. The authority shall be notified in writing of any change in the policy. Allocation of refund among the Osteopathic Medicine Scholarship Program and other student financial assistance programs shall be consistent with allocation of refund and repayment among federal student financial assistance programs administered under the federal act. Refund of an amount due by the school shall be transmitted to the authority and shall be accompanied by the student's name and Social Security number, the reason for the refund, date of enrollment status change, the semester and year, and the calculation used for determining the refund. The number of eligible students who may withdraw from the program of study and be entitled to a refund of charges under the school's policy is anticipated to be inconsequential.

2. Second and subsequent years: The number of students eligible to receive awards under this program will increase by 60 students each year until a maximum number of 360 students are eligible for this award. This will result in a negligible increase in the volume of paperwork required for the Pikeville College School of Osteopathic Medicine.

(3) Effect on the promulgating body: This administrative regulation sets forth the procedure for the refund to the authority of monies paid under this program. The impact on the promulgating body is anticipated to be a minimal increase in paperwork.

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation only sets forth the procedure for the refund to the authority of monies paid under this program. The impact on the promulgating body is anticipated to be minimal. No extra staff has been employed to administer the authority's functions with respect to this program. Costs of administering the program will be absorbed by the authority.

2. Continuing costs or savings: Same as #1 above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This administrative regulation will result in a minimal increase in paperwork for the authority in receiving and processing refund payments from the school.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no effect on state and local revenues. The number and amount of refunds is anticipated to be negligible. The money will be returned to the trust fund from which the scholarships are funded.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funding for the program shall be transferred to a special trust fund from the coal severance tax revenues levied under KRS 143.020 in an amount that permits each recipient eligible under this program to be awarded a scholarship. No more than 4% of the coal severance tax revenues levied under KRS 143.020 and collected annually shall be transferred to the trust fund. The trust fund for this program may also receive state appropriations, gifts and grants from public and private sources, and federal funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation only sets forth the procedures for the refund to the authority of monies paid under this program. There is no anticipated economic impact of this particular administrative regulation. The program, as a whole, is anticipated to have a positive, but unquantified, economic impact upon the geographical area where the award recipient attends school, resulting from a flow of funds disbursed to the recipients to meet educational costs at the Pikeville College School of Osteopathic Medicine.

(b) Kentucky: This administrative regulation only sets forth the procedures for the refund to the authority of monies paid under this program. There is no anticipated economic impact of this particular administrative regulation. The program, as a whole, is anticipated to have a positive, but unquantified, economic impact upon the state, resulting in a flow of funds disbursed to the recipients to meet educational costs at the Pikeville College School of Osteopathic Medicine. Enrollment may be slightly increased to the extent of an undetermined number of award recipients that would otherwise not have

enrolled absent the tuition award.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods for the refund to the authority of monies paid under this program were considered. The requirements outlined in the administrative regulation are consistent with procedures familiar to both the Pikeville College School of Osteopathic Medicine and the authority for the administration of other student financial assistance programs and are, therefore, anticipated to facilitate administration of this program for all concerned.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation only sets forth the procedures for the refund to the authority of monies paid under this program. There is no anticipated impact of this particular administrative regulation upon public health and environmental welfare.

(b) State whether a detrimental effect on the environmental or public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: there is no anticipated impact of this particular administrative regulation upon public health and environmental welfare.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: There is no known conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no known conflict.

(10) Any additional information of comments: None

(11) Tiering: Was tiering applied? No. The concept of tiering is not applicable to this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute and, consequently, does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

#### KENTUCKY HIGHER EDUCATION ASSISTANCE AUTHORITY (New Administrative Regulation)

11 KAR 14:050. Osteopathic Medicine Scholarship Program records and administrative regulations.

RELATES TO: 1998 Ky. Acts ch. 256, sec. 1

STATUTORY AUTHORITY: KRS 164.748(4), 1998 Ky. Acts ch. 256, sec. 1(9)

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 256, sec. 1(9) establishes the Osteopathic Medicine Scholarship Program and requires the authority to administer the program and to promulgate administrative regulations for administration of the program. This administrative regulation provides guidelines for maintaining records under the Osteopathic Medicine Scholarship Program.

Section 1. The school of osteopathic medicine shall maintain complete and accurate records pertaining to the eligibility, enrollment, and progress of students receiving aid under this program and the disbursement of funds and institutional charges as may be necessary to audit the disposition of these funds. The school's records shall be maintained for at least three (3) years after the student ceases to be enrolled at the school of osteopathic medicine.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: June 26, 1998

FILED WITH LRC: July 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative

regulation shall be held on Friday, August 21, 1998 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, August 14, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX # (502) 696-7293.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Richard F. Casey

(1) Type and number of entities affected: It is anticipated that up to 360 students will receive scholarship awards to attend the Pikeville College School of Osteopathic Medicine. The scholarship award will be equal to the difference between the amount of tuition charged by the Pikeville College School of Osteopathic Medicine and the amount of tuition charged by the medical schools at the University of Kentucky and the University of Louisville. It is anticipated that during the first year following implementation of this administrative regulation 120 students will be eligible to receive scholarship awards under this program. For the 1998 Fiscal Year it is anticipated that the scholarship award will be \$12,850.00 per student.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: This administrative regulation sets forth guidelines for the maintenance of records under this program. There is no anticipated impact of this particular administrative regulation upon the cost of living or employment in the state. The program, however, will reduce the direct out-of-pocket expenditure by residents of the Commonwealth who wish to attend the Pikeville College School of Osteopathic Medicine and plan to practice osteopathic medicine in the Commonwealth.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent from the public comments received: This administrative regulation only sets forth guidelines for the maintenance of records under this program. The requirements are consistent with requirements upon the Pikeville College School of Osteopathic Medicine under federal student financial assistance programs administered by the school. Therefore, there is no anticipated impact of this particular administrative regulation upon the cost of doing business in the state.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing cost (note any effects upon competition) for the:

1. First year following implementation: The osteopathic school of medicine shall maintain complete and accurate records pertaining to the eligibility, enrollment, and academic progress of students receiving aid under this program and the disbursement of funds and institutional charges for at least 3 years after the student ceases to be enrolled at the school of osteopathic medicine. It is anticipated that during the first year following implementation of this administrative regulation 120 students will be eligible to receive scholarship awards under this program.

2. Second and subsequent years: The number of students eligible to receive scholarship awards under this program will increase by 60 students each year until a maximum number of 360 students are eligible for this scholarship award. This will result in a minimal increase in the volume of paperwork required for the Pikeville College School of Osteopathic Medicine.

(3) Effect on the promulgating body: This administrative regulation sets forth guidelines for the maintenance of records under this program. There is no anticipated impact on the promulgating body.

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation only sets forth guidelines for the maintenance of records under this program to facilitate audit or compliance reviews under the program. The impact on the promulgating body is anticipated to be minimal. No extra staff has been employed to administer the authority's functions with respect to this program. Costs of administering the program will be absorbed by the authority.

2. Continuing costs or savings: Same as #1 above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This administrative regulation will not result in any increase in paperwork requirements for the authority.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funding for the program shall be transferred to a special trust fund from the coal severance tax revenues levied under KRS 143.020 in an amount that permits each recipient eligible under this program to be awarded a scholarship. No more than 4% of the coal severance tax revenues levied under KRS 143.020 and collected annually shall be transferred to the trust fund. The trust fund for this program may also receive state appropriations, gifts and grants from public and private sources, and federal funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation only sets forth guidelines for the maintenance of records under this program. There is no anticipated economic impact of this particular administrative regulation. The program, as a whole, is anticipated to have a positive, but unquantified, economic impact upon the geographical area where the award recipients attend school, resulting from a flow of funds disbursed to the recipients to meet educational costs at the Pikeville College School of Osteopathic Medicine.

(b) Kentucky: This administrative regulation only sets forth guidelines for the maintenance of records under this program. There is no anticipated economic impact of this particular administrative regulation. The program, as a whole, is anticipated to have a positive, but unquantified, economic impact upon the state, resulting in a flow of funds disbursed to the recipients to meet educational costs at the Pikeville College School of Osteopathic Medicine. Enrollment may be slightly increased to the extent of an undetermined number of award recipients that would otherwise not have enrolled absent the tuition award.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods for guidelines for the maintenance of records under this program. The requirements outlined in this administrative regulation are consistent with procedures familiar to both the Pikeville College School of Osteopathic Medicine and the authority for the administration of other student financial assistance programs and are, therefore, anticipated to facilitate administration of this program for all concerned.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation only sets forth guidelines for the maintenance of records under this program. There is no anticipated impact of this particular administrative regulation upon public health and environmental welfare.

(b) State whether a detrimental effect on the environmental or public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: There is no anticipated impact of this particular administrative regulation upon public health and environmental welfare.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: There is no known conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no known conflict.



(10) Any additional information of comments: None

(11) Tiering: Was tiering applied? No. The concept of tiering is not applicable to this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute and, consequently, does not inherently result in disproportionate impact on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

**KENTUCKY HIGHER EDUCATION  
ASSISTANCE AUTHORITY  
(New Administrative Regulation)**

**11 KAR 14:060 Osteopathic Medicine Scholarship Program  
application of payments.**

RELATES TO: 1998 Ky. Acts ch. 256, sec.1

STATUTORY AUTHORITY: KRS 164.748(4), 1998 Ky. Acts ch. 256, sec. 1(9)

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 256, sec 1(9) establishes to Osteopathic Medicine Scholarship Program and requires the authority to administer the program and to promulgate administrative regulations for administration of the program. This administrative regulation provides procedures for the application of payments made under the Osteopathic Medicine Scholarship Program.

Section 1. Definitions. (1) "Authority" is defined in KRS 164.740(1).

(2) "Disbursement" shall mean the date the student signs the check register described in 11 KAR 14:030, Section 1.

(3) "Qualified service" is defined in 1998 Ky. Acts ch. 256, sec. 1(3)(c).

Section 2. If the authority has reason to believe that the scholarship recipient has ceased enrollment at the school of osteopathic medicine prior to completion of the program of study or that the scholarship recipient has otherwise failed to perform qualified service after obtaining a license to practice osteopathic medicine, written notification of demand for payment of all outstanding promissory notes, including unpaid principal and interest accrued since the date of disbursement, shall be sent by the authority to the scholarship recipient's last known address and shall be effective upon mailing.

Section 3. If the scholarship recipient obligated for repayment remits only a partial payment, the payment shall first be applied to accrued interest and then to unpaid principal on the earliest unpaid promissory note and on each unpaid promissory note in the order in which the promissory notes were executed.

Section 4. The interest rate applicable to repayment of a promissory note under this program shall be twelve (12) percent per annum.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: June 26, 1998

FILED WITH LRC: July 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, August 21, 1998 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, August 14, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the

public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX # (502) 696-7293.

**REGULATORY IMPACT ANALYSIS**

Agency Contact: Richard F. Casey

(1) Type and number of entities affected: It is anticipated that up to 360 students will receive awards to attend the Pikeville College School of Osteopathic Medicine. The scholarship award will be equal to the difference between the amount of tuition charged by the Pikeville College School of Osteopathic Medicine and the amount of tuition charged by the medical schools at the University of Kentucky and the University of Louisville. It is anticipated that during the first year following implementation of this administrative regulation 120 students will be eligible to receive awards under this program. For the 1998 Fiscal Year it is anticipated that the scholarship award will be \$12,850.00 per student.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: This administrative regulation sets forth the procedures for the application of payments made by students under this program. The administrative regulation also establishes the rate of interest accrual as 12% per annum, the maximum rate allowed under the enabling statute, to provide a disincentive for students to repay the scholarship in lieu of providing the desired medical service. There is no anticipated impact of this particular administrative regulation upon the cost of living or employment in the state. The program, however, will reduce the direct out-of-pocket expenditure by residents of the Commonwealth who wish to attend the Pikeville College School of Osteopathic Medicine and plan to practice osteopathic medicine in the Commonwealth.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent from the public comments received: This administrative regulation only sets forth the procedures for the application of payments made by students under this program. There is no anticipated impact of this particular administrative regulation upon the cost of doing business in the state.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing cost (note any effects upon competition) for the:

1. First year following implementation: There are no compliance, reporting and paperwork requirements imposed by this particular administrative regulation on the school or eligible students.

2. Second and subsequent years: Same as #1 above.

(3) Effect on the promulgating body: This administrative regulation sets forth the procedures for the application of payments made by students under this program. The impact on the promulgating body is anticipated to be minimal.

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation sets forth the procedures for the application of payments made by students under this program. The impact on the promulgating body is anticipated to be minimal. No extra staff has been employed to administer the authority's functions with respect to this program. Costs of administering this program will be absorbed by the authority.

2. Continuing costs or savings: Same as year above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This administrative regulation will result in a minimal paperwork for the authority in receiving, processing, and accounting for any partial payment that a student might submit in lieu of payment of the entire balance in a lump sum as will be demanded by the authority.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no effect on state and local revenues.



(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funding for this program shall be transferred to a special trust fund from the coal severance tax revenues levied under KRS 143.020 in an amount that permits each recipient eligible under this program to be awarded a scholarship. No more than 4% of the coal severance tax revenues levied under KRS 143.020 and collected annually shall be transferred to the trust fund. The trust fund for this program may also receive state appropriations, gifts and grants from public and private sources, and federal funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: This administrative regulation only sets forth the procedures for the application of payments made by students under this program. There is no anticipated economic impact of this particular administrative regulation. This program, as a whole, is anticipated to have a positive, but unquantified, economic impact upon the geographical area where the award recipients attend school, resulting from a flow of funds disbursed to the recipients to meet educational costs at the Pikeville College School of Osteopathic Medicine.

(b) Kentucky: This administrative regulation only sets forth the procedures for the application of payments made by students under this program. There is no anticipated economic impact of this particular administrative regulation. The program, as a whole, is anticipated to have a positive, but unquantified, economic impact upon the state, resulting in a flow of funds disbursed to the recipients to meet educational costs at the Pikeville College School of Osteopathic Medicine. Enrollment may be slightly increased to the extent of an undetermined number of award recipients that would otherwise not have enrolled absent the tuition award.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative procedures for the application of payments made by students under this program were considered. Payment of the entire balance of scholarships will be demanded by the authority when it is determined that repayment is due. However, it is unavoidable that, given the large balances potentially owed under this program, some students will submit only a partial payment at any one time. This presents the situation in which the authority must determine how to apply the partial payment to the outstanding balance owed. The chosen method is common for the administration of other student financial assistance programs and is, therefore, anticipated to facilitate administration of this program for all concerned.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation only sets forth the procedures for the application of payments made by students under this program. There is no anticipated impact of this particular administrative regulation upon public health and welfare.

(b) State whether a detrimental effect on the environmental or public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: There is no anticipated impact of this particular administrative regulation upon public health and environmental welfare.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: There is no known conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no known conflict.

(10) Any additional information of comments: None

(11) Tiering: Was tiering applied? No. The concept of tiering is not applicable to this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute and, consequently, does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal

protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

**KENTUCKY HIGHER EDUCATION  
ASSISTANCE AUTHORITY  
(New Administrative Regulation)**

**11 KAR 14:070. Osteopathic Medicine Scholarship Program  
notifications.**

RELATES TO: 1998 Ky. Acts ch. 256, sec. 1

STATUTORY AUTHORITY: KRS 164.748(4), 1998 Ky. Acts ch. 256, sec. 1(9)

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Act ch. 256, sec. 1(9) establishes the Osteopathic Medicine Scholarship Program and requires the authority to administer the program and to promulgate administrative regulations for administration of the program. This administrative regulation sets forth the obligation of the scholarship recipient and the school of osteopathic medicine to notify the Kentucky Higher Education Assistance Authority of a change in enrollment status, employment in a qualified service position, and change of name or address.

Section 1. Definitions. (1) "Authority" is defined in KRS 164.740.

(2) "Qualified service" is defined in 1998 Ky. Acts ch. 256, sec. 1(3)(c).

Section 2. A scholarship recipient shall notify the authority in writing within thirty (30) days of:

(1) Cessation of full-time enrollment in the osteopathic medicine program;

(2) Completion or failure to complete a residency requirement and licensure to practice osteopathic medicine;

(3) Employment in a qualified service position; and

(4) Change of name, permanent home address, or place of employment.

Section 3. A school of osteopathic medicine shall notify the authority in writing within thirty (30) days of learning that an Osteopathic Medicine Scholarship recipient has ceased to be enrolled on a full-time basis at the school of osteopathic medicine or failed to complete a residency requirement.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: June 26, 1998

FILED WITH LRC: July 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, August 21, 1998 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, August 14, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX # (502) 696-7293.

**REGULATORY IMPACT ANALYSIS**

Agency Contact: Richard F. Casey

(1) Type and number of entities affected: It is anticipated that up to 360 students will receive awards to attend Pikeville College School of Osteopathic Medicine. The scholarship award will be

equal to the difference between the amount of tuition charged by the Pikeville College School of Osteopathic Medicine and the amount of tuition charged by the medical schools at the University of Kentucky and the University of Louisville. It is anticipated that during the first year following implementation of this administrative regulation 120 students will be eligible to receive scholarship awards under this program. For the 1998 Fiscal Year it is anticipated that the scholarship award will be \$12,850 per student.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: This administrative regulation only sets forth the obligation of the scholarship recipient and the Pikeville College School of Osteopathic Medicine to notify the authority of change in enrollment status, employment in a qualified service position and change of name or address. There is no anticipated impact of this particular administrative regulation upon the cost of living or employment in the state. The program, however, will reduce the direct out-of-pocket expenditure by residents of the Commonwealth who wish to attend the Pikeville College School of Osteopathic Medicine and plan to practice osteopathic medicine in the Commonwealth.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent from the public comments received: This administrative regulation only sets forth the obligation of the scholarship recipient and the Pikeville College School of Osteopathic Medicine to notify the authority of change in enrollment status, employment in a qualified service position and change of name or address. The information required to be reported by the Pikeville College School of Osteopathic Medicine is information that is already monitored and available to the institution. Therefore, there is no anticipated impact of this particular administrative regulation upon the cost of doing business in the state.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing cost (note any effects upon competition) for the:

1. First year following implementation: The scholarship recipient shall notify the Kentucky Higher Education Assistance Authority within 30 days of change in enrollment status, employment in a qualified service position, and change of name or address. Similarly, the school of osteopathic medicine shall notify the authority in writing within 30 days of learning that a scholarship recipient has ceased full-time enrollment status. It is anticipated that during the first year following implementation of this administrative regulation 120 students will be eligible to receive scholarship awards under this program.

2. Second and subsequent years: The number of students eligible to receive scholarship awards under this program will increase by 60 students each year until a maximum number of 360 students are eligible for this scholarship award. This will result in a minimal increase in the volume of paperwork required for the authority and for the Pikeville College School of Osteopathic Medicine.

(3) Effect on the promulgating body: This administrative regulation sets forth the obligation of the scholarship recipient and the Pikeville College School of Osteopathic Medicine to notify the authority of change in enrollment status, employment in a qualified service position and change of name or address. The impact on the promulgating body is anticipated to be a minimal increase in paperwork.

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation only sets forth the obligation of the scholarship recipient and the Pikeville College School of Osteopathic Medicine to notify the authority of change in enrollment status, employment in a qualified service position and change of name or address. The impact on the promulgating body is anticipated to be minimal. No extra staff has been employed to administer the authority's functions with respect to this program. Costs of administering the program will be absorbed by the authority.

2. Continuing costs or savings: Same as #1 above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This administrative regulation will result in minimal paperwork for the authority in receiving, processing and updating information from the student and the school pertaining to the student's enrollment and employment

status.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funding for this program shall be transferred to a special trust fund from the coal severance tax revenues levied under KRS 143.020 in an amount that permits each recipient eligible under this program to be awarded a scholarship. No more than 4% percent of the coal severance tax revenues levied under KRS 143.020 and collected annually shall be transferred to the trust fund. The trust fund for this program may also receive state appropriations, gifts and grants from public and private sources, and federal funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: No public comments have been received. This administrative regulation only sets forth the obligation of the scholarship recipient and the Pikeville College School of Osteopathic Medicine to notify the authority of change in enrollment status, employment in a qualified service position and change of name or address. There is no anticipated economic impact of this particular administrative regulation. The program, as a whole, is anticipated to have a positive, but unquantified, economic impact upon the geographical area where the award recipients attend school, resulting from a flow of funds disbursed to the recipients to meet educational costs at the Pikeville College School of Osteopathic Medicine.

(b) Kentucky: This administrative regulation only sets forth the obligation of the scholarship recipient and the Pikeville College School of Osteopathic Medicine to notify the authority of change in enrollment status, employment in a qualified service position and change of name or address. There is no anticipated economic impact of this particular administrative regulation. The program, as a whole, is anticipated to have a positive, but unquantified, economic impact upon the state, resulting in a flow of funds disbursed to the recipients to meet educational costs at the Pikeville College School of Osteopathic Medicine. Enrollment may be slightly increased to the extent of an undetermined number of award recipients that would otherwise not have enrolled absent the tuition award.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods for the obligation of the scholarship recipient and the Pikeville College School of Osteopathic Medicine to notify the authority of change in enrollment status, employment in a qualified service position and change of name or address were considered. The requirements outlined in the administrative regulation are consistent with procedures familiar to both the Pikeville College School of Osteopathic Medicine and the authority for the administration of other student financial assistance programs and are, therefore, anticipated to facilitate administration of this program for all concerned.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation only sets forth the obligation of the scholarship recipient and the Pikeville College School of Osteopathic Medicine to notify the authority of change in enrollment status, employment in a qualified service position and change of name or address. There is no anticipated impact of this particular administrative regulation upon public health and environmental welfare.

(b) State whether a detrimental effect on the environmental or public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: There is no anticipated impact of this particular administrative regulation upon public health and environmental welfare.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: There is no known conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no known conflict.

(10) Any additional information of comments: None

(11) Tiering: Was tiering applied? No. The concept of tiering is not applicable to this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute and, consequently, does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

**KENTUCKY HIGHER EDUCATION  
ASSISTANCE AUTHORITY  
(New Administrative Regulation)**

**11 KAR 14:080. Deferment of Osteopathic Medicine Scholarship Program repayment.**

RELATES TO: 1998 Ky. Acts ch. 256, sec.1

STATUTORY AUTHORITY: KRS 164.748(4), 1998 Ky. Acts ch. 256, sec. 1(9)

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 256, sec. 1(9) establishes the Osteopathic Medicine Scholarship Program and requires the authority to administer the program and to promulgate administrative regulations for administration of the program. This administrative regulation prescribes conditions for deferment of the repayment obligation under the Osteopathic Medicine Scholarship Program.

Section 1. Definitions. (1) "Authority" is defined in KRS 164.740(1).

(2) "Deferment" means a temporary waiver of the obligation of an osteopathic medicine scholarship recipient to make payments to the authority pursuant to one (1) or more promissory notes, executed between the recipient and the authority, which is granted by the authority, for a specified period of time, upon a showing of cause by the recipient.

(3) "Qualified service" is defined in 1998 Ky. Acts ch. 256, sec. 1(3)(c).

Section 2. Request for Deferment. (1) The osteopathic medicine scholarship recipient shall request a deferment in writing by submitting to the authority complete and accurate information verifying the recipient's circumstances that qualify for deferment in accordance with this administrative regulation.

(2) The recipient's submission of a request for deferment shall constitute authorization for the authority to request and receive such verification from any third party of facts represented by the recipient as may be deemed necessary by the authority.

Section 3. Effect on Repayments. (1) During a deferment, no principal or interest repayments shall be required, but interest shall continue to accrue on the unpaid principal balance owed by the recipient during the period specified in Section 4(1) of this administrative regulation.

(2) Nothing contained in this administrative regulation shall require the authority to grant a deferment if such deferment would legally impair the ultimate recovery of the principal and accrued interest otherwise owed by the recipient.

(3) A promissory note for which repayment is deferred in accordance with this administrative regulation may subsequently be cancelled in accordance with 1998 Ky. Acts ch. 256, sec. 1(5) if the osteopathic medicine scholarship recipient resumes full-time enrollment in an accredited program of study at a school of osteopathic medicine located in the Commonwealth or renders qualified service.

Section 4. Types of Deferments. The following deferments may be granted by the authority. The authority may grant deferment of repayment for a period of one (1) year, not to exceed an aggregate of thirty-six (36) months, excluding residency deferment, for the

following circumstances:

(1) Disability deferment. A deferment may, at the sole discretion of the authority, be granted to an osteopathic medicine scholarship recipient who is:

(a) Temporarily totally disabled and, therefore, unable to attend school or perform qualified service; or

(b) Unable to attend school or perform qualified service due to the temporary, total disability of the osteopathic medicine scholarship recipient's spouse who requires continuous (twenty-four (24) hour) nursing or similar care by the recipient.

(c) For purposes of this deferment, an osteopathic medicine scholarship recipient, or the spouse of a recipient, is temporarily totally disabled if he suffers an injury or illness which necessitates an extended or indefinite period of recovery which can be expected to preclude school attendance or employment and, in case of a recipient's spouse, he is not confined to a hospital, nursing home, intermediate care facility, or similar institution.

(d) The recipient shall provide to the authority a statement from a licensed physician (other than the osteopathic medicine scholarship recipient) certifying that the recipient or spouse is temporarily totally disabled in accordance with the preceding terms and conditions. The recipient is solely responsible for securing the physician's certification and ensuring that it is received by the authority.

(e) This deferment may, at the authority's discretion, be granted for periods of less than one (1) year at a time and shall be subject to periodic review of a physician's certification. After the third year of a recipient's disability deferment, pursuant to this subsection, the authority may, in its sole discretion, cancel the debt if it appears that the disability is expected to continue for an indefinite time.

(2) Hardship deferment.

(a) If enrollment in an accredited program at a school of osteopathic medicine located in the Commonwealth or performance of qualified service is temporarily interrupted due to circumstances beyond the recipient's control, including, but not limited to, natural disaster or death in the family, after which the recipient intends to resume such enrollment or qualified service position, the authority may determine that a hardship exists and may grant a deferment.

(b) This deferment may, at the authority's discretion, be granted for periods of less than one (1) year but cannot exceed an aggregate of twelve (12) months, and may be subject to periodic review of documentation.

(3) Residency deferment.

(a) An osteopathic medicine scholarship recipient may receive a deferment during enrollment in a three (3) year postgraduate residency in family practice, general internal medicine, or general pediatrics prior to beginning practice.

(b) The recipient shall submit to the authority verification that he is enrolled in a residency program, the start date, and anticipated end date of the residency from the hospital, clinic, or other institution where the residency is being performed.

(c) This verification shall contain the following information:

1. The recipient's name, Social Security number, current address, and telephone number;
2. The name and address of the hospital, clinic, or other institution where the residency is being performed;
3. The name, title, address, telephone number, and signature on a statement of certification or verification of the person supervising the recipient's residency program; and
4. The expected date that the residency program will be completed.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: June 26, 1998

FILED WITH LRC: July 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, August 21, 1998 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, August 14, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the

public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX # (502) 696-7293.

# REGULATORY IMPACT ANALYSIS

Agency Contact: Richard F. Casey

(1) Type and number of entities affected: It is anticipated that up to 360 students will receive awards to attend Pikeville College School of Osteopathic Medicine. The scholarship award will be equal to the difference between the amount of tuition charged by the Pikeville College School of Osteopathic Medicine and the amount of tuition charged by the medical schools at the University of Kentucky and the University of Louisville. It is anticipated that during the first year following implementation of this administrative regulation 120 students will be eligible to receive scholarship awards under this program. For the 1998 Fiscal Year it is anticipated that the scholarship award will be \$12,850 per student.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: This administrative regulation only sets forth the conditions for deferment of the recipient's repayment obligation under this program. There is no anticipated impact of this particular administrative regulation upon the cost of living or employment in the state. The program, however, will reduce the direct out-of-pocket expenditure by residents of the Commonwealth who wish to attend the Pikeville College School of Osteopathic Medicine and plan to practice osteopathic medicine in the Commonwealth.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent from the public comments received: This administrative regulation only sets forth the conditions for deferment of the recipient's repayment obligation under this program. There is no anticipated impact of this particular administrative regulation upon the cost of doing business in the state.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing cost (note any effects upon competition) for the:

1. First year following implementation: The osteopathic medicine scholarship recipient shall request a deferment in writing by submitting complete and accurate information to the authority. The osteopathic medicine scholarship recipient shall meet the specified conditions to receive a deferment of payment for a temporary period. The deferment shall not suspend the accrual of interest. The Kentucky Higher Education may, in its discretion, grant deferment of repayment for periods not to exceed an aggregate of 36 months for disability, hardship, or completion of residency, or any combination thereof. It is anticipated that during the first year following implementation of this administrative regulation 120 students will be eligible to receive scholarship awards under this program. It cannot be determined how many students might seek or qualify for a deferment based upon disability or hardship. All students must complete a residency prior being licensed to commence the practice that will qualify as repayment of the scholarship.

2. Second and subsequent years: The number of students eligible to receive scholarship awards under this program will increase by 60 students each year until a maximum number of 360 students are eligible for this scholarship award. This will result in a minimal increase in volume of paperwork required for the authority and for the Pikeville College School of Osteopathic Medicine.

(3) Effect on the promulgating body: This administrative regulation sets forth the conditions for deferment of the recipient's repayment obligation under this program. The impact on the promulgating body is anticipated to be minimal.

(a) Direct and indirect costs or savings:

1. First year: This administrative regulation only sets forth the conditions for deferment of the recipient's repayment obligation un-

der this program. The impact on the promulgating body is anticipated to be minimal. No extra staff has been employed to administer the authority's functions with respect to this program. Costs of administering the program will be absorbed by the authority.

2. Continuing costs or savings: Same as #1 above.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: This administrative regulation will result in a minimal increase in paperwork for both the Pikeville College School of Osteopathic Medicine and the authority in verifying, receiving and processing the request for deferment from the student.

(4) Assessment of anticipated effect on state and local revenues: This administrative regulation will have no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funding for this program shall be transferred to a special trust fund from the coal severance tax revenues levied under KRS 143.020 in an amount that permits each recipient eligible under this program to be awarded a scholarship. No more than 4% of the coal severance tax revenues levied under KRS 143.020 and collected annually shall be transferred to the trust fund. The trust fund for this program may also receive state appropriations, gifts and grants from public and private sources, and federal funds.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: No public comments have been received. This administrative regulation only sets forth the conditions for deferment of the recipient's repayment obligation under this program. There is no anticipated economic impact of this particular administrative regulation. The program, as a whole, is anticipated to have a positive, but unquantified, economic impact upon the geographical area where the award recipients attend school, resulting from a flow of funds disbursed to the recipients to meet educational costs at the Pikeville College School of Osteopathic Medicine.

(b) Kentucky: This administrative regulation only sets forth the conditions for deferment of the recipient's repayment obligation under this program. There is no anticipated economic impact of this particular administrative regulation. The program, as a whole, is anticipated to have a positive, but unquantified, economic impact upon the state, resulting in a flow of funds disbursed to the recipients to meet educational costs at the Pikeville College School of Osteopathic Medicine. Enrollment may be slightly increased to the extent of an undetermined number of award recipients that would otherwise not have enrolled absent the tuition award.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternative methods for the deferment of the recipient's repayment obligation under this program were considered. The requirements outlined in the administrative regulation are consistent with procedures familiar to both the Pikeville College School of Osteopathic Medicine and the authority for the administration of other student financial assistance programs and are, therefore, anticipated to facilitate administration of this program for all concerned.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This administrative regulation only sets forth the conditions for deferment of the recipient's repayment obligation under this program. There is no anticipated impact of this particular administrative regulation upon public health and environmental welfare.

(b) State whether a detrimental effect on the environmental or public health would result if not implemented: No

(c) If detrimental effect would result, explain detrimental effect: There is no anticipated impact of this particular administrative regulation upon public health and environmental welfare.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: There is no known conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no

known conflict.

(10) Any additional information of comments: None

(11) Tiering: Was tiering applied? No. The concept of tiering is not applicable to this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute and, consequently, does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

**KENTUCKY HIGHER EDUCATION  
ASSISTANCE AUTHORITY  
Division of Student Services  
(New Administrative Regulation)**

**11 KAR 15:010. Definitions.**

RELATES TO: 1998 Ky. Acts ch. 575, sec. 1 through sec. 6 and 20 USC sec. 1087I

STATUTORY AUTHORITY: KRS 164.748(4), 1998 Ky. Acts ch. 575, sec. 6(7)

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 575 requires the authority to administer certain aspects of the Commonwealth Merit Scholarship Program and to promulgate administrative regulations for the administration of the program. This administrative regulation defines or references certain statutory definitions of terms commonly used in the administration of the program.

Section 1. Definitions. (1) "Academic term" is defined in 1998 Ky. Acts ch. 575, sec. 2(1).

(2) "Authority" is defined in 1998 Ky. Acts ch. 575, sec. 2(4).

(3) "Award period" is defined in 1998 Ky. Acts ch. 575, sec. 2(5).

(4) "Commonwealth merit scholarship" is defined in 1998 Ky. Acts ch. 575, sec. 2(6).

(5) "Eligible program of study" means, for purposes of enrollment in a participating institution, a postsecondary, undergraduate program that leads to a certificate, diploma, or associate or baccalaureate degree. The term shall include study abroad or study otherwise away from the main campus, if the student pays tuition to and is given academic credit by the participating institution for that study but shall exclude a program of study leading to a certificate, diploma, or degree in theology, divinity, or religious education.

(6) "Eligible student" is defined in 1998 Ky. Acts ch. 575, sec. 2(10).

(7) "Full-time student" is defined in 1998 Ky. Acts ch. 575, sec. 2(11).

(8) "Grade point average" is defined in 1998 Ky. Acts ch. 575, sec. 2(12).

(9) "Maximum award amount" is defined in 1998 Ky. Acts ch. 575, sec. 2(14).

(10) "Participating institution" is defined in 1998 Ky. Acts ch. 575, sec. 2(15).

(11) "Part-time student" is defined in 1998 Ky. Acts ch. 575, sec. 2(16).

(12) "Supplemental award" is defined in 1998 Ky. Acts ch. 575, sec. 2(17).

(13) "Commonwealth Merit Scholarship Program officer" means the official designated on the administrative agreement, pursuant to KRS 164.748(5), to serve as the participating institution's on-campus agent to certify all institutional transactions and activities with respect to the Commonwealth Merit Scholarship Program.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: June 26, 1998

FILED WITH LRC: July 14, 1998 at 2 p.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on Friday, August 21, 1998 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, August 14, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX # (502) 696-7293.

**REGULATORY IMPACT ANALYSIS**

Agency Contact: Richard F. Casey

(1) Type and number of entities affected: As many as 90 post-secondary institutions could be eligible to participate in the scholarship program administered under this chapter of the Kentucky Administrative Regulations. More than 380 public and private Kentucky high schools are likewise eligible to participate and approximately 191,000 high school students are potentially eligible for scholarships.

(2) Direct and indirect costs or savings on the:

(a) Cost of Living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The administrative regulation itself merely defines terms commonly used in administration of the Commonwealth Merit Scholarship Program. Therefore it has no direct or indirect cost or savings respecting the cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent from the public comments received: The administrative regulation itself merely defines terms commonly used in administration of the Commonwealth Merit Scholarship Program. Therefore it has no direct or indirect cost or savings respecting the cost of doing business.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing cost (note any effects upon competition) for the:

1. First year following implementation: The administrative regulation itself merely defines terms commonly used in administration of the Commonwealth Merit Scholarship Program. The administrative regulation does not impose any compliance, reporting or paperwork requirements of any participating institution or student and is anticipated to have no effect upon competition.

2. Second and subsequent years: Same as #1 above

(3) Effect on the promulgating body:

(a) Direct and indirect costs or savings:

1. First year: The administrative regulation itself merely defines terms commonly used in administration of the Commonwealth Merit Scholarship Program. Therefore it has no direct or indirect cost or savings respecting the promulgating body.

2. Continuing costs or savings: Same as #1 above

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The administrative regulation itself merely defines terms commonly used in administration of the Commonwealth Merit Scholarship Program. The administrative regulation does not impose any reporting or paperwork requirements upon the promulgating body.

(4) Assessment of anticipated effect on state and local revenues: The administrative regulation itself merely defines terms commonly used in administration of the Commonwealth Merit Scholarship Program. Therefore it has no effect on state and local revenues. The funds for this program are provided by net lottery revenues; gifts; bequests; endowments; grants from the United States government, its agencies, and instrumentalities; and funds received from any other sources, public or private. See (5) below for further detail.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The funds for this program are provided by net lottery revenues; gifts; bequests; endowments; grants from the United States government, its agencies, and instrumentalities; and funds received from any other sources, public or private credited to a permanent and perpetual trust fund established in the State Treasury. The funds are continuously appropriated only for the purposes set forth in the enabling statutes. Upon the approval of the Council on Postsecondary Education, the authority may expend funds from the Commonwealth merit scholarship trust fund that are necessary and reasonable to meet the expenses of administering the Commonwealth merit scholarship trust fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: No public comments were received. Students that receive scholarships under the program will experience an economic impact to the extent that funds may be used by the student for postsecondary education related expenses, thus enabling the student to pursue higher education and potentially increase their lifelong earning capacity.

(b) Kentucky: Same as (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered. The administrative regulation itself merely defines terms commonly used in administration of the Commonwealth Merit Scholarship Program under 11 KAR Chapter 15.

(8) Assessment of expected benefits: Establishment of uniform meaning of commonly used terms in the administration of the Commonwealth Merit Scholarship Program.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no effect upon public health or the environment resulting from this administrative regulation.

(b) State whether a detrimental effect on the environment or public health would result if not implemented: There is no effect upon public health or the environment resulting from this administrative regulation.

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: There is no known conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no known conflict.

(10) Any additional information of comments: None

(11) Tiering: Was tiering applied? No. The concept of tiering is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute, and consequently, does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

**KENTUCKY HIGHER EDUCATION  
ASSISTANCE AUTHORITY  
Division of Student Services  
(New Administrative Regulation)**

**11 KAR 15:020. Student eligibility report.**

RELATES TO: 1998 Ky. Acts ch. 575, sec. 6(4)  
STATUTORY AUTHORITY: KRS 164.748(4), 1998 Ky. Acts ch.

575, sec. 6(7)

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 575 requires the authority to administer certain aspects of the Commonwealth Merit Scholarship Program and to promulgate administrative regulations for the administration of the program. This administrative regulation sets forth the procedure for a participating institution to report renewal eligibility of a student for a Commonwealth Merit Scholarship.

Section 1. Eligibility Verification. (1) The participating institution shall electronically submit to the authority a renewal eligibility file not later than June 30 after the completion of the award period. The renewal eligibility file shall contain the name, Social Security number, and the cumulative grade point average for all eligible students.

(2) A participating institution that does not submit a renewal eligibility file by June 30 shall not receive Commonwealth Merit Scholarship funds until it has satisfied the requirement in subsection (1) of this section. Furthermore, the authority, in its sole discretion, may withhold any service and funds from the participating institution and initiate action to terminate, suspend or limit participation of the institution pursuant to 11 KAR 4:020 until the file is received by the authority.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: June 26, 1998

FILED WITH LRC: July 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, August 21, 1998 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, August 14, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX # (502) 696-7293.

**REGULATORY IMPACT ANALYSIS**

Agency Contact: Richard F. Casey

(1) Type and number of entities affected: As many as 90 postsecondary institutions could be eligible to participate in the scholarship program administered under this chapter of the Kentucky Administrative Regulations. Approximately 191,000 high school students are potentially eligible for scholarships. An undeterminable number of those students will attend postsecondary institutions in the Commonwealth and receive the scholarships. For those eligible students who attend the Kentucky postsecondary institutions, the institutions are responsible for reporting the continued academic performance to determine renewal eligibility.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The administrative regulation itself sets forth the annual reporting requirement for Kentucky postsecondary institutions to determine renewal eligibility for eligible students. Therefore it has no direct or indirect cost or savings respecting the cost of living or employment. The scholarship program, however, will reduce the direct out-of-pocket expenditure by residents of the Commonwealth who wish to attend Kentucky postsecondary institutions thus enabling the student to pursue higher education and potentially increase their lifelong earning capacity.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent from the public comments received: No public comments have been re-



ceived. The administrative regulation itself sets forth the annual reporting requirement for Kentucky postsecondary institutions in administration of the Commonwealth Merit Scholarship Program. A requirement that the necessary report be provided by a date certain each year and submitted electronically is intended to provide the necessary information with a minimum of burden to postsecondary institutions. Cost of doing business for the institutions would be effected by the time necessary to prepare the information and any programming necessary to submit the information electronically and is likely to vary depending on the size and data processing capabilities of the institution.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing cost (note any effects upon competition) for the:

1. First year following implementation: The statute requires that for each eligible student enrolling in a participating institution after July 1, 1999, the participating institution shall verify to the authority the eligible student's cumulative grade point average after the completion of each award period. The administrative regulation provides that the participating institutions shall provide to the authority not later than June 30 after the end of an award period each year, certification to the authority of the cumulative GPA of all enrolled students, in order to determine renewal eligibility. The participating institution shall electronically submit to the authority a renewal eligibility file. The renewal eligibility file shall contain the name, social security number, and the cumulative grade point average for all eligible students. There is no known impact upon competition.

2. Second and subsequent years: Same as #1 above

(3) Effect on the promulgating body:

(a) Direct and indirect costs or savings:

1. First year: The administrative regulation itself sets forth the annual reporting requirement for Kentucky postsecondary institutions in administration of the Commonwealth Merit Scholarship Program. A requirement that the necessary report be provided by a date certain each year and submitted electronically is intended to provide the necessary information with a minimum of burden to postsecondary institutions. Direct costs to the promulgating body would initially be those necessary to the programming of the agency's data processing system to update and store the essential eligibility data. Thereafter, direct or indirect costs to the promulgating body would be those undetermined costs associated with receiving and processing the electronic data annually from as many as 90 postsecondary institutions. Submission by the participating institutions of an electronic file rather than a printed list that requires data entry is expected to affect some savings respecting the promulgating body.

2. Continuing costs or savings: Same as #1 above

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The administrative regulation itself sets forth the annual reporting requirement for Kentucky postsecondary institutions in administration of the Commonwealth Merit Scholarship Program. The administrative regulation does not impose any reporting or paperwork requirements upon the promulgating body. Any requirements upon the promulgating body would be the administrative burden associated with receiving and processing the electronic data annually from as many as 90 postsecondary institutions.

(4) Assessment of anticipated effect on state and local revenues: The administrative regulation itself sets forth the annual reporting requirement for Kentucky postsecondary institutions in administration of the Commonwealth Merit Scholarship Program. Therefore it has no effect on state and local revenues. The funds for this program are provided by net lottery revenues; gifts; bequests; endowments; grants from the United States government, its agencies, and instrumentalities; and funds received from any other sources, public or private. See (5) below for further detail.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The funds for this program are provided by net lottery revenues; gifts; bequests; endowments; grants from the United States government, its agencies, and instrumentalities; and funds received from any other sources, public or private credited to a permanent and perpetual trust fund established in the State Treasury. The funds are continuously appropriated only for the purposes set forth in the enabling statutes. Upon the approval of the Council on Postsecondary Education, the authority may

expend funds from the Commonwealth merit scholarship trust fund that are necessary and reasonable to meet the expenses of administering the Commonwealth merit scholarship trust fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: No public comments were received. Students that receive scholarships under the program will experience an economic impact to the extent that funds may be used by the student for post-secondary education related expenses, thus enabling the student to pursue higher education and potentially increase their lifelong earning capacity.

(b) Kentucky: Same as (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires that for each eligible student enrolling in a participating institution after July 1, 1999, the participating institution shall verify to the authority the eligible student's cumulative grade point average after the completion of each award period. The administrative regulation provides that the participating institutions shall electronically submit to the authority a renewal eligibility file. The only known alternative would be for the participating institution to compile and submit a paper report which would necessitate data entry by the authority. This alternative has been rejected because it is more expensive, less efficient and more prone to error for the authority in necessitating data entry. In the current technological environment, it is believed by the authority that nearly all postsecondary institutions would maintain student records in a computer database. Thus, it is anticipated that the electronic transmittal would be less expensive and less prone to error for the institution as well.

(8) Assessment of expected benefits: The administrative regulation is intended to provide for the essential exchange of information in administering this program with a minimum of burden to postsecondary institutions.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no effect upon public health or the environment resulting from this administrative regulation.

(b) State whether a detrimental effect on the environmental or public health would result if not implemented: There is no effect upon public health or the environment resulting from this administrative regulation.

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: There is no known conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no known conflict.

(10) Any additional information of comments: None

(11) Tiering: Was tiering applied? No. The concept of tiering is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute, and consequently, does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

KENTUCKY HIGHER EDUCATION  
ASSISTANCE AUTHORITY  
Division of Student Services  
(New Administrative Regulation)

**11 KAR 15:030. Dual enrollment under consortium agreement.**

RELATES TO: 1998 Ky. Acts ch. 575, sec. 1 to 6

STATUTORY AUTHORITY: KRS 164.748(4), 1998 Ky. Acts ch. 575, sec. 6(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires KHEAA to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. 1998 Ky. Acts ch. 575, sec. 6(7) allows the authority to establish by administrative regulation procedures for the administration of the Commonwealth Merit Scholarship Program. This administrative regulation sets the conditions for Commonwealth Merit Scholarship eligibility for a student simultaneously enrolled in two (2) or more participating institutions.

Section 1. For purposes of the Commonwealth Merit Scholarship program, a student who is otherwise eligible pursuant to 1998 Ky. Acts ch. 575, sec. 1 to 6 and is enrolled simultaneously in two (2) or more participating institutions pursuing a program of study jointly offered by those institutions, shall be eligible under this section if the eligible program of study is covered by a consortium agreement between the participating institutions and if the student is carrying a combined academic workload at all participating institutions in the consortium equal to at least half-time enrollment at the primary institution.

Section 2. Consortium Agreement. Two (2) or more participating institutions in the Commonwealth Merit Scholarship Program may, for purposes of Section 1 of this administrative regulation, execute a consortium agreement which meets at least the following terms and conditions:

- (1) The agreement shall be written and signed by authorized representatives of each participating institution;
- (2) The agreement shall designate which participating institution will serve as the "primary" institution; and
- (3) The agreement shall specify that the primary institution shall perform the duties set forth in Section 3 of this administrative regulation.

Section 3. Duties of Primary Institution. For purposes of Section 2 of this administrative regulation, the primary institution designated in a consortium agreement shall assume the following duties and responsibilities:

- (1) Maintain all records, including information from all participating institutions about the student's grades, institutional costs incurred, financial aid received, enrollment, and all other information related to the student's eligibility as is required to be maintained on any other Commonwealth Merit Scholarship recipient enrolled only in the primary institution;
- (2) Disburse the Commonwealth Merit Scholarship to the eligible student;
- (3) Confer academic credit to the student for all courses completed at other participating institutions under the consortium agreement as if the courses had been provided by the primary institution;
- (4) Monitor the student's enrollment status at all participating institutions in the consortium and indicate the student's enrollment at the primary institution as the equivalent of the combined enrollment at all participating institutions in the consortium;
- (5) Calculate any refund or repayment and make any such refund based on the primary institution's refund policy, as provided in 11 KAR 15:060 based upon any change in enrollment at any participating institution in the consortium, as if the student were enrolled only at the primary institution;
- (6) Provide to the authority, on behalf of all participating institutions in the consortium, all reports and notifications required by law or administrative regulation as if the eligible student were enrolled

only at the primary institution.

Section 4. The consortium agreement may contain any other terms and conditions, not inconsistent with this administrative regulation, as may be deemed necessary or appropriate by the participating institutions.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: June 26, 1998

FILED WITH LRC: July 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, August 21, 1998 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, August 14, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX # (502) 696-7293.

REGULATORY IMPACT ANALYSIS

Agency Contact: Richard F. Casey

(1) Type and number of entities affected: As many as 90 postsecondary institutions could be eligible to participate in the scholarship program administered under this chapter of the Kentucky Administrative Regulations. Approximately 191,000 high school students are potentially eligible for scholarships. An undeterminable number of those students will attend postsecondary institutions in the Commonwealth and receive the scholarships. For those eligible students who attend the Kentucky postsecondary institutions, an undetermined number of students might attend more than one participating institution on less than a full-time basis at each institution.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The administrative regulation itself sets forth requirements for the authority to recognize a consortium arrangement between two or more Kentucky postsecondary institutions to determine eligibility for eligible students. Therefore it has no direct or indirect cost or savings respecting the cost of living or employment. The scholarship program, however, will reduce the direct out-of-pocket expenditure by residents of the Commonwealth who wish to attend Kentucky postsecondary institutions thus enabling the student to pursue higher education and potentially increase their lifelong earning capacity.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent from the public comments received: No public comments have been received. The administrative regulation itself sets forth requirements for the authority to recognize a consortium arrangement between two or more Kentucky postsecondary institutions to determine eligibility for eligible students. Cost of doing business for the institutions would be effected only to the extent that institutions voluntarily choose to enter into a consortium agreement with other participating institutions to ensure the eligibility of students enrolled simultaneously at each institution. It is anticipated that only a negligible impact on cost of doing business by the time necessary to negotiate and execute a consortium agreement. However, the required scope of the consortium agreement provided by this administrative regulation is no different than the requirements for such agreements under federal regulations governing the administration of federal student financial assistance programs. Therefore, it is anticipated that participating institutions likely to execute consortium agreements will generally already have such agreements in place for federal pro-

gram purposes.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing cost (note any effects upon competition) for the:

1. First year following implementation: The administrative regulation itself sets forth requirements for the authority to recognize a consortium arrangement between two or more Kentucky postsecondary institutions to determine eligibility for eligible students. Compliance, reporting and paperwork requirements would be effected only to the extent that institutions voluntarily choose to enter into a consortium agreement with other participating institutions to ensure the eligibility of students enrolled simultaneously at each institution. The participating institutions shall execute a consortium agreement according to the terms and conditions that generally designate a primary institution to coordinate and be responsible for performing the duties required by law, administrative regulation, and agreement as if the eligible student is enrolled only at that primary institution. There is no known impact upon competition.

2. Second and subsequent years: Same as #1 above

(3) Effect on the promulgating body:

(a) Direct and indirect costs or savings:

1. First year: The administrative regulation itself sets forth requirements for the authority to recognize a consortium arrangement between two or more Kentucky postsecondary institutions to determine eligibility for eligible students. The transaction is intended to be transparent to the promulgating body except during a program compliance review or audit of the participating institution's activities respecting eligible students and administration of the program. It is expected to affect no costs or savings respecting the promulgating body.

2. Continuing costs or savings: Same as #1 above

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The administrative regulation itself sets forth requirements for the authority to recognize a consortium arrangement between 2 or more Kentucky postsecondary institutions to determine eligibility for eligible students. The transaction is intended to be transparent to the promulgating body except during a program compliance review or audit of the participating institution's activities respecting eligible students and administration of the program. It is expected to affect no reporting and paperwork respecting the promulgating body.

(4) Assessment of anticipated effect on state and local revenues: The administrative regulation itself sets forth requirements for the authority to recognize a consortium arrangement between 2 or more Kentucky postsecondary institutions to determine eligibility for eligible students. Therefore it has no effect on state and local revenues. The funds for this program are provided by net lottery revenues; gifts; bequests; endowments; grants from the United States government, its agencies, and instrumentalities; and funds received from any other sources, public or private. See (5) below for further detail.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The funds for this program are provided by net lottery revenues; gifts; bequests; endowments; grants from the United States government, its agencies, and instrumentalities; and funds received from any other sources, public or private credited to a permanent and perpetual trust fund established in the State Treasury. The funds are continuously appropriated only for the purposes set forth in the enabling statutes. Upon the approval of the Council on Postsecondary Education, the authority may expend funds from the Commonwealth merit scholarship trust fund that are necessary and reasonable to meet the expenses of administering the Commonwealth merit scholarship trust fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: No public comments were received. The administrative regulation itself sets forth requirements for the authority to recognize a consortium arrangement between 2 or more Kentucky postsecondary institutions to determine eligibility for eligible students. Students that receive scholarships under the program will experience an economic impact to the extent that funds may be used by the student for postsecondary education related expenses,

thus enabling the student to pursue higher education and potentially increase their lifelong earning capacity.

(b) Kentucky: Same as (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered. The administrative regulation itself sets forth requirements for the authority to recognize a consortium arrangement between 2 or more Kentucky postsecondary institutions to determine eligibility for eligible students. The procedures outlined in the administrative regulation are consistent with procedures familiar to both the participating institutions and the authority for the administration of other student financial assistance programs and are, therefore, anticipated to facilitate administration of this program for all concerned.

(8) Assessment of expected benefits: The administrative regulation is intended to provide the conditions under which a consortium agreement shall be considered valid for purposes of the Commonwealth Merit Scholarship Program to permit eligible students to receive scholarship funds while taking classes at different institutions.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no effect upon public health or the environment resulting from this administrative regulation.

(b) State whether a detrimental effect on the environmental or public health would result if not implemented: There is no effect upon public health or the environment resulting from this administrative regulation.

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: There is no known conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no known conflict.

(10) Any additional information of comments: None

(11) Tiering: Was tiering applied? No. The concept of tiering is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute, and consequently, does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

**Kentucky Higher Education  
Assistance Authority  
(New Administrative Regulation)**

**11 KAR 15:040. Commonwealth Merit Scholarship award determination procedure.**

RELATES TO: 1998 Ky. Acts ch. 575, sec. 5(4)

STATUTORY AUTHORITY: KRS 164.748(4), 1998 Ky. Acts ch. 575, secs. 5(4)(b), 6(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires KHEAA to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. 1998 Ky. Acts ch. 575, sec. 6(7) allows the authority to establish by administrative regulation procedures for the administration of the Commonwealth Merit Scholarship Program. 1998 Ky. Acts ch. 575, sec. 5(4)(b) requires the authority to promulgate an administrative regulation to proportionately reduce the maximum award amount for an eligible student enrolled part time. This administrative regulation sets the conditions for Commonwealth merit scholarship eligibility for eligible students enrolled on a part-time basis.

Section 1. Reduction for Part-time Study. (1) If an eligible student is enrolled as a part-time student for any academic term, the maximum award amount to which the student is entitled shall be as follows:

- (a) Fifty (50) percent if enrolled for six (6) hours;
  - (b) Fifty-eight (58) percent if enrolled for seven (7) hours;
  - (c) Sixty-seven (67) percent if enrolled for eight (8) credit hours;
  - (d) Seventy-five (75) percent if enrolled for nine (9) hours;
  - (e) Eighty-three (83) percent if enrolled for ten (10) hours;
  - (f) Ninety-two (92) percent if enrolled for eleven (11) hours; and
  - (g) 100 percent if enrolled for twelve (12) hours or more.
- (2) The equivalent academic unit of measurement will be used to correspond to a credit hour, if the participating institution does not use credit hours.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: June 26, 1998

FILED WITH LRC: July 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, August 21, 1998 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, August 14, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX # (502) 696-7293.

#### REGULATORY IMPACT ANALYSIS

Agency Contact: Richard F. Casey

(1) Type and number of entities affected: As many as 90 post-secondary institutions could be eligible to participate in the scholarship program administered under this chapter of the Kentucky Administrative Regulations. Approximately 191,000 high school students are potentially eligible for scholarships. An undetermined number of those students will attend postsecondary institutions in the Commonwealth and receive the scholarships. For those eligible students who attend the Kentucky postsecondary institutions, an undetermined number of students might attend on less than a full time basis.

(2) Direct and indirect costs or savings on the:

(a) Cost of Living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The administrative regulation itself sets forth a proration of scholarship award amounts to determine the reduced award for eligible students attending a participating institution on less than a full-time basis. Therefore it has no direct or indirect cost or savings respecting the cost of living or employment. The scholarship program, however, will reduce the direct out-of-pocket expenditure by residents of the Commonwealth who wish to attend Kentucky postsecondary institutions thus enabling the student to pursue higher education and potentially increase their lifelong earning capacity.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent from the public comments received: No public comments have been received. The administrative regulation itself sets forth proration of scholarship award amounts to determine the reduced award for eligible students attending a participating institution on less than a full-time basis. Cost of doing business for the participating institutions would be not be effected.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing cost (note any effects upon competition) for the:

1. First year following implementation: The administrative regulation itself sets forth proration of scholarship award amounts to determine the reduced award for eligible students attending a participating institution on less than a full-time basis. There is no known impact upon competition.

2. Second and subsequent years: Same as #1 above

(3) Effect on the promulgating body:

(a) Direct and indirect costs or savings:

1. First year: The administrative regulation itself sets forth proration of scholarship award amounts to determine the reduced award for eligible students attending a participating institution on less than a full-time basis. The transaction is intended to be transparent to the promulgating body in that awards will still be made and disbursed to eligible students, but the amount will be reduced based upon enrollment status as certified by the participating institution. Any discrepancies would be discovered during a program compliance review or audit of the participating institution's activities respecting eligible students and administration of the program. It is expected to affect no costs or savings respecting the promulgating body.

2. Continuing costs or savings: Same as #1 above

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The administrative regulation itself sets forth proration of scholarship award amounts to determine the reduced award for eligible students attending a participating institution on less than a full-time basis. The transaction is intended to be transparent to the promulgating body except during a program compliance review or audit of the participating institution's activities respecting eligible students and administration of the program. It is expected to affect no reporting and paperwork respecting the promulgating body.

(4) Assessment of anticipated effect on state and local revenues: The administrative regulation itself sets forth proration of scholarship award amounts to determine the reduced award for eligible students attending a participating institution on less than a full-time basis. The funds for this program are provided by net lottery revenues; gifts; bequests; endowments; grants from the United States government, its agencies, and instrumentalities; and funds received from any other sources, public or private. See (5) below for further detail. Because these funds are held in trust, reduction in a scholarship award for any individual student will simply leave an unexpended amount of funds in the trust for subsequent expenditure on another eligible student in a subsequent year. Therefore it has no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The funds for this program are provided by net lottery revenues; gifts; bequests; endowments; grants from the United States government, its agencies, and instrumentalities; and funds received from any other sources, public or private credited to a permanent and perpetual trust fund established in the State Treasury. The funds are continuously appropriated only for the purposes set forth in the enabling statutes. Upon the approval of the Council on Postsecondary Education, the authority may expend funds from the Commonwealth merit scholarship trust fund that are necessary and reasonable to meet the expenses of administering the Commonwealth merit scholarship trust fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: No public comments were received. The administrative regulation itself sets forth proration of scholarship award amounts to determine the reduced award for eligible students attending a participating institution on less than a full-time basis. Students that receive scholarships under the program will experience an economic impact to the extent that funds may be used by the student for postsecondary education related expenses, thus enabling the student to pursue higher education and potentially increase their lifelong earning capacity.

(b) Kentucky: Same as (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered. No alternatives were considered. The enabling statute provides that the authority shall, by promulgation of administrative regulations, provide for the proportionate reduction of the maximum award amount

for an eligible student for any academic term in which the student is enrolled on a part-time basis. The administrative regulation itself sets forth proration of scholarship award amounts to determine the reduced award for eligible students attending a participating institution on less than a full-time basis. The amount of scholarship is proportionately tied to the number of credit hours for which the student is enrolled from a half-time status up to full-time status.

(8) assessment of expected Benefits: The administrative regulation is intended to provide for proportionate reduction of the maximum Commonwealth Merit Scholarship Program award amount in compliance with the enabling statute.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no effect upon public health or the environment resulting from this administrative regulation.

(b) State whether a detrimental effect on the environmental or public health would result if not implemented: There is no effect upon public health or the environment resulting from this administrative regulation.

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: There is no known conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no known conflict.

(10) Any additional information of comments: None

(11) Tiering: Was tiering applied? No. The concept of tiering is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute, and consequently, does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

**KENTUCKY HIGHER EDUCATION  
ASSISTANCE AUTHORITY  
Division of Student Services  
(New Administrative Regulation)**

**11 KAR 15:050. Disbursement.**

RELATES TO: 1998 Ky. Acts ch. 575, secs. 6(4), (5)

STATUTORY AUTHORITY: KRS 164.748(4), 1998 Ky. Acts ch. 575, sec. 6(7)

NECESSITY, FUNCTION, AND CONFORMITY: 1998 Ky. Acts ch. 575 requires the authority to administer certain aspects of the Commonwealth Merit Scholarship Program and to promulgate administrative regulations for the administration of the program. This administrative regulation sets forth the disbursement procedures for Commonwealth merit scholarships.

Section 1. Eligibility Verification. (1) The participating institution shall submit to the authority an eligibility verification file after the beginning of the academic term. The eligibility verification file shall contain the name, Social Security number, the student's highest ACT score attained by the date of graduation from high school, and the full-time or part-time enrollment status, measured in credit hours or credit hour equivalent, at the beginning of each academic term for all eligible students. The Commonwealth Merit Scholarship Program officer shall certify the eligibility of the eligible student and transmit the file electronically to the authority according to instructions provided by the authority.

(2) The instructions provided by the authority shall specify:

(a) Conditions under which Commonwealth Merit Scholarship funds shall be disbursed to the benefit of the eligible student;

(b) Conditions under which Commonwealth Merit Scholarship funds shall be returned to the authority.

(3) A participating institution that does not submit an eligibility verification file according to instructions shall not receive Commonwealth Merit Scholarship funds until it has satisfied the requirements in subsection (1) of this section. Furthermore, the authority, in its sole discretion, may withhold any services and funds from the participating institution until the file and all funds advanced, that remain undisbursed to eligible students, are received by the authority.

Section 2. Disbursement of Funds. (1) Commonwealth Merit Scholarship funds shall be disbursed by the authority to the participating institution in the form of a single check, made payable to the participating institution, or by electronic funds transfer delivered to the participating institution for subsequent delivery to the eligible student.

(2) Within thirty (30) days following receipt of the eligibility verification file, the disbursement of Commonwealth Merit Scholarship funds by the authority to the participating institution shall be made for subsequent delivery by the institution to an eligible student.

Section 3. Delivery of funds by the participating institution. (1) The participating institution shall be responsible for proper delivery of Commonwealth Merit Scholarship funds. The participating institution shall not make Commonwealth Merit Scholarship funds available to the eligible student nor apply such funds to the recipient's account prior to the date that the eligible student has completed the registration requirements (except for the payment of tuition and fees) at the participating institution for the academic term for which the Commonwealth Merit Scholarship is disbursed.

(2) The participating institution shall be liable for delivery to the wrong person or to an ineligible student and shall make restitution to the authority of any amount improperly delivered. Failure of the participating institution to make restitution when required shall, without precluding other remedies, be deemed cause for limitation, suspension, or termination of the participation of the institution in accordance with 11 KAR 4:020.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: June 26, 1998

FILED WITH LRC: July 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, August 21, 1998 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, August 14, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX # (502) 696-7293.

**REGULATORY IMPACT ANALYSIS**

Agency Contact: Richard F. Casey

(1) Type and number of entities affected: As many as 90 post-secondary institutions could be eligible to participate in the scholarship program administered under this chapter of the Kentucky Administrative Regulations. Approximately 191,000 high school students are potentially eligible for scholarships. An undeterminable number of those students will attend postsecondary institutions in the Commonwealth and receive the scholarships. For those eligible students who attend the Kentucky postsecondary institutions, the institutions are responsible for reporting the continued enrollment



status to determine eligibility for disbursement of the scholarship.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The administrative regulation itself sets forth the reporting requirement for Kentucky postsecondary institutions to certify continued eligibility for eligible students. Therefore it has no direct or indirect cost or savings respecting the cost of living or employment. The scholarship program, however, will reduce the direct out-of-pocket expenditure by residents of the Commonwealth who wish to attend Kentucky postsecondary institutions thus enabling the student to pursue higher education and potentially increase their lifelong earning capacity.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent from the public comments received: No public comments have been received. The administrative regulation itself sets forth reporting requirement for Kentucky postsecondary institutions in administration of the Commonwealth Merit Scholarship Program. A requirement that the necessary report be provided at the beginning of each academic term and submitted electronically is intended to provide the necessary information with a minimum of burden to postsecondary institutions. Cost of doing business for the institutions would be effected by the time necessary to prepare the information and any programming necessary to submit the information electronically and is likely to vary depending on the size and data processing capabilities of the institution.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing cost (note any effects upon competition) for the:

1. First year following implementation: The statute requires that for each eligible student enrolling in a participating institution after July 1, 1999, the participating institution shall verify to the authority the eligible student's full-time or part-time enrollment status at the beginning of each academic term and shall submit to the authority a report, in a form satisfactory to the authority, of all eligible students enrolled for that academic term. Commonwealth Merit scholarships and supplemental awards shall be disbursed by the authority to each eligible student attending a participating institution during the academic term within 30 days after receiving a satisfactory report. The administrative regulation provides that the participating institutions shall provide to the authority after the beginning of each academic term certification to the authority of the name, social security number, the student's highest ACT score attained by the date of graduation from high school, and the full-time or part-time enrollment status, measured in credit hours or credit hour equivalent, at the beginning of each academic term for all eligible students. The participating institution shall electronically submit this file to the authority. Funds shall be disbursed by a check payable to the institution or by electronic fund transfer. The scholarship funds shall then be delivered by the institution to the eligible student or applied to the student's account. The participating institution shall be liable for improper delivery of funds, including delivery of the wrong amount or delivery of funds to the wrong individual or to an ineligible student. There is no known impact upon competition.

2. Second and subsequent years: Same as #1 above

(3) Effect on the promulgating body:

(a) Direct and indirect costs or savings:

1. First year: The administrative regulation itself sets forth reporting requirements for Kentucky postsecondary institutions in administration of the Commonwealth Merit Scholarship Program. A requirement that the necessary report be submitted electronically is intended to provide the necessary information with a minimum of burden to postsecondary institutions. Direct costs to the promulgating body would initially be those necessary to the programming of the agency's data processing system to update and store the essential eligibility data. Thereafter, direct or indirect costs to the promulgating body would be those undetermined costs associated with receiving and processing the electronic data at the beginning of each academic term from as many as 90 postsecondary institutions. Submission by the participating institutions of an electronic file rather than a printed list that requires data entry is expected to affect some savings respecting the promulgating body.

2. Continuing costs or savings: Same as #1 above

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The administrative regulation itself sets forth reporting requirements for Kentucky postsecondary institutions in administration of the Commonwealth Merit Scholarship Program. The administrative regulation does not impose any reporting or paperwork requirements upon the promulgating body other than disbursement of the scholarship funds to the participating institution by a check payable to the institution or by electronic funds transfer. Any requirements upon the promulgating body would be the administrative burden associated with receiving and processing the electronic data at the beginning of each academic term from as many as 90 postsecondary institutions.

(4) Assessment of anticipated effect on state and local revenues: The administrative regulation itself sets forth reporting requirements for Kentucky postsecondary institutions in administration of the Commonwealth Merit Scholarship Program. Therefore it has no effect on state and local revenues. The funds for this program are provided by net lottery revenues; gifts; bequests; endowments; grants from the United States government, its agencies, and instrumentalities; and funds received from any other sources, public or private. See (5) below for further detail.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The funds for this program are provided by net lottery revenues; gifts; bequests; endowments; grants from the United States government, its agencies, and instrumentalities; and funds received from any other sources, public or private credited to a permanent and perpetual trust fund established in the State Treasury. The funds are continuously appropriated only for the purposes set forth in the enabling statutes. Upon the approval of the Council on Postsecondary Education, the authority may expend funds from the Commonwealth Merit Scholarship trust fund that are necessary and reasonable to meet the expenses of administering the Commonwealth Merit Scholarship trust fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: No public comments were received. Students that receive scholarships under the program will experience an economic impact to the extent that funds may be used by the student for postsecondary education related expenses, thus enabling the student to pursue higher education and potentially increase their lifelong earning capacity.

(b) Kentucky: Same as (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The statute requires that for each eligible student enrolling in a participating institution after July 1, 1999, the participating institution shall verify to the authority the eligible student's full-time or part-time enrollment status at the beginning of each academic term and shall submit to the authority a report, in a form satisfactory to the authority, of all eligible students enrolled for that academic term. The administrative regulation provides that the participating institutions shall electronically submit to the authority an eligibility file. The only known alternative would be for the participating institution to compile and submit a paper report which would necessitate data entry by the authority. This alternative has been rejected because it is more expensive, less efficient and more prone to error for the authority in necessitating data entry. In the current technological environment, it is believed by the authority that nearly all postsecondary institutions would maintain student records in a computer database. Thus, it is anticipated that the electronic transmittal would be less expensive and less prone to error for the institution as well.

(8) Assessment of expected benefits: Timely disbursement of funds following verification of continued eligibility by the participating institution, using the most economical and efficient method of delivery of funds to each eligible student in accordance with 1998 Ky. Acts ch. 575, sec. 6(5). The administrative regulation also provides for liability of the participating institution for improper disbursement to the wrong person or ineligible students as protection of the trust fund.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no effect upon public health or the environment resulting



from this administrative regulation.

(b) State whether a detrimental effect on the environmental or public health would result if not implemented: There is no effect upon public health or the environment resulting from this administrative regulation.

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: There is no known conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no known conflict.

(10) Any additional information of comments: None

(11) Tiering: Was tiering applied? No. The concept of tiering is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute, and consequently, does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

**KENTUCKY HIGHER EDUCATION  
ASSISTANCE AUTHORITY  
(New Administrative Regulation)**

**11 KAR 15:060. Commonwealth Merit Scholarship  
overaward and refund and repayment procedure.**

RELATES TO: 34 CFR 668.22, 1998 Ky. Acts ch. 575, sec. 1 to 6

STATUTORY AUTHORITY: KRS 164.748(4), 34 CFR 668.22, 1998 Ky. Acts ch. 575, sec. 6(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires the authority to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. 1998 Ky. Acts ch. 575, sec. 6(7) requires the authority to establish by administrative regulation procedures for the administration of the Commonwealth Merit Scholarship Program. This administrative regulation sets forth the conditions and procedures for refund or repayment of Commonwealth Merit Scholarship funds.

Section 1. (1) If an eligible student fails to enroll, withdraws, or changes enrollment status, and a refund of monies paid to the institution is owed to the student by the participating institution in accordance with the participating institution's refund and repayment policy relative to financial aid funds, the amount of the refund attributable to the Commonwealth Merit Scholarship Program shall be determined in accordance with the participating institution's policy and shall be paid to the authority.

(2) The participating institution's policy shall be published and consistently administered.

(3) The policy shall be filed with the authority and the participating institution shall notify the authority in writing of any change in the policy.

Section 2. Absent error by the authority or the participating institution or misrepresentation by a person that results in delivery of Commonwealth Merit Scholarship Program funds to a person who is not an eligible student at the time of the delivery of funds, no repayment of Commonwealth Merit Scholarship Program funds shall be owed to the authority by an eligible student that withdraws or changes enrollment status.

Section 3. If a refund is due from the participating institution or a repayment is due from a person who is not an eligible student at the time of delivery of funds, the participating institution shall transmit to the authority the refund and a notice of repayment due from the person that is not an eligible student, and shall report the student's name and Social Security number, the reason for the refund or repayment, date of enrollment status change, academic term and award period, and the calculation used for determining the refund or repayment.

Section 4. (1) The participating institution's refund and repayment policy relative to financial aid funds shall be adopted by the participating institution in accordance with 34 CFR 668.22.

(2) The subject matter of this administrative regulation is governed by 34 CFR 668.22, published in 53 FR 49147, December 6, 1988; 58 FR 32202, June 8, 1993; 59 FR 21866, April 26, 1994; 59 FR 22436, April 29, 1994; 59 FR 32657, June 24, 1994; 59 FR 34964, July 7, 1994; 59 FR 61180, November 29, 1994; 60 FR 34431, June 30, 1995; 60 FR 42408, August 15, 1995; 60 FR 61810, December 1, 1995; 61 FR 60396, November 27, 1996 and in effect July 1, 1997, adopted by the authority without change.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: June 26, 1998

FILED WITH LRC: July 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, August 21, 1998 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, August 14, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX # (502) 696-7293.

**REGULATORY IMPACT ANALYSIS**

Agency Contact: Richard F. Casey

(1) Type and number of entities affected: As many as 90 post-secondary institutions could be eligible to participate in the scholarship program administered under this chapter of the Kentucky Administrative Regulations. Approximately 191,000 high school students are potentially eligible for scholarships. An undeterminable number of those students will attend postsecondary institutions in the Commonwealth and receive the scholarships. For those eligible students who attend the Kentucky postsecondary institutions, an undetermined number will cease enrollment and be entitled to a refund of costs paid to the institution under the institution's established refund policy. The institutions shall refund to the authority a portion of the Commonwealth merit scholarship award if the eligible student withdraws after the commencement of the academic term and a refund is due in accordance with the participating institution's refund and repayment policy.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The administrative regulation itself sets forth the conditions and procedures for refund or repayment of Commonwealth merit scholarship funds. Therefore it has no direct or indirect cost or savings respecting the cost of living or employment. The scholarship program, however, will reduce the direct out-of-pocket expenditure by residents of the Commonwealth who wish to attend Kentucky postsecondary institutions thus enabling the student to pursue higher education and potentially increase their lifelong earning capacity.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent from the public comments received: No public comments have been received. The administrative regulation does not impose any additional cost of doing business on the participating institutions. The administrative regulation itself sets forth the conditions and procedures for refund or repayment of Commonwealth merit scholarship funds. The requirements that the participating institution shall refund to the authority and the eligible student shall repay to the authority a portion of the Commonwealth merit scholarship award if the eligible student withdraws after the commencement of the academic term and a refund or repayment is due in accordance with the participating institution's refund and repayment policy and the participating institution shall certify to the authority the reason for the refund or repayment and the eligible student's last date of attendance are intended to provide the necessary information with a minimum of burden to postsecondary institutions and to protect the public interest in the Commonwealth Merit Scholarship Program funds by recovering funds awarded to an eligible student but not used for payment of the cost of education at a participating institution. Cost of doing business for the institutions would be effected by the time necessary to prepare and implement the refund and repayment policy and the expense of the refunds paid to the authority. However, that cost is negated by the fact that all participating institutions, because of their participation in the federal Pell Grant program, already are required under federal regulations to establish and implement a refund and repayment policy as mandated by this administrative regulation. The expense of making the refund is no additional cost to the institution because the institution would simply be paying to the Commonwealth Merit Scholarship Trust Fund what it would otherwise be required to pay to the student under its own policy.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing cost (note any effects upon competition) for the:

1. First year following implementation: The participating institution shall establish and comply with a refund and repayment policy that provides that the participating institution shall refund to the authority and the eligible student shall repay to the authority a portion of the Commonwealth Merit Scholarship Award if the eligible student withdraws under certain conditions. The participating institution shall certify to the authority the reason for the refund or repayment and the eligible student's last date of attendance. The refund and repayment policy would be the same policy as the institution is already required to establish and implement under federal regulations governing federal student financial assistance programs. Therefore, the requirement of this administrative regulation does not affect any additional compliance, reporting or paperwork than the institution is currently subject to under federal regulations governing other student financial assistance programs. The procedures outlined in the administrative regulation are consistent with procedures familiar to both the participating institution and the authority for the administration of other student financial assistance programs and are, therefore, anticipated to facilitate administration of this program for all concerned. There is no known impact upon competition.

2. Second and subsequent years: Same as #1 above

(3) Effect on the promulgating body:

(a) Direct and indirect costs or savings:

1. First year: The administrative regulation itself sets forth the conditions and procedures for refund or repayment of Commonwealth Merit Scholarship funds. There will be no additional direct or indirect costs to the promulgating body to redistribute the refunded or repaid scholarship funds.

2. Continuing costs or savings: Same as #1 above

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The administrative regulation itself sets forth the conditions and procedures for refund or repayment of Commonwealth Merit Scholarship funds. The administrative regulation imposes the reporting or paperwork requirement to transmit to the promulgating body the student's name and Social Security number, the reason for the refund or repayment, date of enrollment status change, academic term and award period, and the calculation used for determining the refund or repayment. Any requirements upon the promulgating body would be the admin-

istrative burden associated with receiving and processing the reported information.

(4) Assessment of anticipated effect on state and local revenues: The administrative regulation itself sets forth the conditions and procedures for refund or repayment of Commonwealth Merit Scholarship funds. Therefore it has no effect on state and local revenues. The funds for this program are provided by net lottery revenues; gifts; bequests; endowments; grants from the United States government, its agencies, and instrumentalities; and funds received from any other sources, public or private. See (5) below for further detail. Because these funds are held in trust, refund or repayment of Commonwealth Merit Scholarship funds for any individual student will simply leave an unexpended amount of funds in the trust for subsequent expenditure on another eligible student in a subsequent year. Therefore it has no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The funds for this program are provided by net lottery revenues; gifts; bequests; endowments; grants from the United States government, its agencies, and instrumentalities; and funds received from any other sources, public or private credited to a permanent and perpetual trust fund established in the State Treasury. The funds are continuously appropriated only for the purposes set forth in the enabling statutes. Upon the approval of the Council on Postsecondary Education, the authority may expend funds from the Commonwealth Merit Scholarship Trust Fund that are necessary and reasonable to meet the expenses of administering the Commonwealth Merit Scholarship Trust Fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: No public comments were received. Students that receive redistributed refunded or repaid scholarship funds under the program will experience an economic impact to the extent that funds may be used by the student for postsecondary education related expenses, thus enabling the student to pursue higher education and potentially increase their lifelong earning capacity.

(b) Kentucky: Same as (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered. The administrative regulation itself merely provides for the refund or repayments of scholarships funds for students who have subsequently become ineligible for the scholarship funds.

(8) Assessment of expected benefits: The administrative regulation is intended to protect the public interest in the Commonwealth Merit Scholarship Program funds by recovering funds awarded to an eligible student but not used for payment of the cost of education at a participating institution because the student fails to enroll, withdraws, or is expelled without assessment of tuition and fees, or withdraws during the academic term while the participating institution's refund policy provides for a refund by the institution or repayment by the eligible student to a financial aid program of unused and unearned funds. The expected benefit is that the refunded or repaid funds shall be redistributed pursuant to the statutes and regulations governing the scholarship program.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no effect upon public health or the environment resulting from this administrative regulation.

(b) State whether a detrimental effect on the environmental or public health would result if not implemented: There is no effect upon public health or the environment resulting from this administrative regulation.

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: There is no known conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no known conflict.

(10) Any additional information of comments: None

(11) Tiering: Was tiering applied? No. The concept of tiering is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute, and consequently, does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

**KENTUCKY HIGHER EDUCATION  
ASSISTANCE AUTHORITY  
Division of Student Services  
(New Administrative Regulation)**

**11 KAR 15:070. Records and reports.**

RELATES TO: 1998 Ky. Acts ch. 575, sec.1 to 6

STATUTORY AUTHORITY: KRS 164.748(4), 1998 Ky. Acts ch. 575, sec. 6(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 164.748(4) requires KHEAA to promulgate administrative regulations pertaining to the awarding of grants, scholarships, and honorary scholarships as provided in KRS 164.740 to 164.785. 1998 Ky. Acts ch. 575, sec. 6(7) allows the authority to establish by administrative regulation procedures for the administration of the Commonwealth Merit Scholarship Program. This administrative regulation sets forth the conditions and procedures for participating institutions to maintain records and make available to the authority records and reports necessary to the implementation of the Commonwealth Merit Scholarship Program.

Section 1. A participating institution shall establish an organized system of records pertaining to Commonwealth Merit Scholarship recipient eligibility, maintain these records for a period of not less than three (3) years after the award year in which the recipient ceased enrollment, and, upon request, make available to the authority:

(1) All records relied upon by that institution to certify that any recipient of funds from the authority is an eligible student; and

(2) Information necessary to verify that the institution has complied with 11 KAR Chapter 15, and representations and requirements contained in its administrative agreement with the authority.

GARY ABNEY, Chairman

RICHARD F. CASEY, General Counsel

APPROVED BY AGENCY: June 26, 1998

FILED WITH LRC: July 14, 1998 at 2 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on Friday, August 21, 1998 at 10 a.m. at 1050 U.S. 127 South, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by Monday, August 14, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. Richard F. Casey, General Counsel, Kentucky Higher Education Assistance Authority, 1050 U.S. 127 South, Frankfort, Kentucky 40601, (800) 693-8211, FAX # (502) 696-7293.

**REGULATORY IMPACT ANALYSIS**

Agency Contact: Richard F. Casey

(1) Type and number of entities affected: As many as 90 post-

secondary institutions could be eligible to participate in the scholarship program administered under this chapter of the Kentucky Administrative Regulations. The participating institutions shall maintain an organized system of records on enrolled eligible students and retain these records for a period of not less than 3 years after the award year in which the eligible student ceased enrollment.

(2) Direct and indirect costs or savings on the:

(a) Cost of Living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: This administrative regulation sets the conditions by which records shall be retained and reports shall be made to the authority. Therefore it has no direct or indirect cost or savings respecting the cost of living or employment. The scholarship program, however, will reduce the direct out-of-pocket expenditure by residents of the Commonwealth who wish to attend Kentucky postsecondary institutions thus enabling the student to pursue higher education and potentially increase their lifelong earning capacity.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent from the public comments received: No public comments have been received. The administrative regulation does not impose any additional cost of doing business on the participating institutions. This administrative regulation sets the conditions by which records shall be retained and reports shall be made to the authority. The participating institutions shall maintain an organized system of records on enrolled eligible students and retain these records for a period of not less than 3 years after the award year in which the eligible student ceased enrollment. These requirements are intended to provide the necessary information with a minimum of burden to postsecondary institutions and to protect the public interest in the Commonwealth Merit Scholarship Program funds. Cost of doing business for the institutions would be effected by the time and expense necessary to compile and retain the records in a systematic and accessible manner. However, that cost is negated by the fact that all participating institutions, because of their participation in the federal Pell Grant Program, already are required under federal regulations to establish and implement a system of records as mandated by this administrative regulation for federal programs of student financial assistance.

(c) Compliance, reporting and paperwork requirements, including factors increasing or decreasing cost (note any effects upon competition) for the:

1. First year following implementation: The participating institutions shall maintain an organized system of records on enrolled eligible students and retain these records for a period of not less than 3 years after the award year in which the eligible student ceased enrollment. There is no known impact upon competition. Upon request, the participating institution shall make available to the authority all records relied upon by that institution to certify that any recipient of funds from the authority is an eligible student and information necessary to verify that the institution has complied with 11 KAR Chapter 15, and representations and requirements contained in its administrative agreement with the authority.

2. Second and subsequent years: Same as #1 above

(3) Effect on the promulgating body:

(a) Direct and indirect costs or savings:

1. First year: The administrative regulation itself sets forth the conditions by which records shall be retained and reports shall be made to the authority. There will be no additional direct or indirect costs to the promulgating body.

2. Continuing costs or savings: Same as #1 above

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The administrative regulation itself sets forth the conditions by which records shall be retained and reports shall be made to the authority. No reporting and paperwork requirements would be imposed upon the promulgating body.

(4) Assessment of anticipated effect on state and local revenues: The administrative regulation itself sets forth the conditions by which records shall be retained and reports shall be made to the authority. Therefore it has no effect on state and local revenues.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The funds for this program are provided by net lottery revenues; gifts; bequests; endowments;

grants from the United States government, its agencies, and instrumentalities; and funds received from any other sources, public or private credited to a permanent and perpetual trust fund established in the State Treasury. The funds are continuously appropriated only for the purposes set forth in the enabling statutes. Upon the approval of the Council on Postsecondary Education, the authority may expend funds from the Commonwealth Merit Scholarship Trust Fund that are necessary and reasonable to meet the expenses of administering the Commonwealth Merit Scholarship Trust Fund.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: No public comments were received. Students that receive redistributed refunded or repaid scholarship funds under the program will experience an economic impact to the extent that funds may be used by the student for postsecondary education related expenses, thus enabling the student to pursue higher education and potentially increase their lifelong earning capacity.

(b) Kentucky: Same as (a) above.

(7) Assessment of alternative methods; reasons why alternatives were rejected: No alternatives were considered. The administrative regulation itself sets forth the conditions by which records shall be retained and reports shall be made to the authority. All participating institutions, because of their participation in the federal Pell Grant Program, already are required under federal regulations to establish and implement a system of records as mandated by this administrative regulation for federal programs of student financial assistance. The requirements outlined in the administrative regulation are consistent with requirements familiar to both the participating institution and the authority for the administration of other student financial assistance programs and are, therefore, anticipated to facilitate administration of this program for all concerned.

(8) Assessment of expected benefits: The administrative regulation is intended to provide for the exchange of necessary information in order to carry out the goals of the Commonwealth Merit Scholarship Program.

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: There is no effect upon public health or the environment resulting from this administrative regulation.

(b) State whether a detrimental effect on the environmental or public health would result if not implemented: There is no effect upon public health or the environment resulting from this administrative regulation.

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: There is no known conflict.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: There is no known conflict.

(10) Any additional information of comments: None

(11) Tiering: Was tiering applied? No. The concept of tiering is not applicable to this amendment of this administrative regulation. The administrative regulation is intended to provide equal opportunity to participate within parameters prescribed by statute, and consequently, does not inherently result in disproportionate impacts on certain classes of regulated entities or address a particular problem to which certain regulated entities do not contribute. Disparate treatment of any person or entity affected by this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U. S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution. The regulation provides equal treatment and opportunity for all applicants and recipients.

GENERAL GOVERNMENT CABINET  
Kentucky Board of Dentistry  
(New Administrative Regulation)

201 KAR 8:440. Fee schedule.

RELATES TO: KRS 313.080, 313.305, 1998 Ky. Acts ch. 556

STATUTORY AUTHORITY: 1998 Ky. Acts ch. 556

NECESSITY, CONFORMITY, AND FUNCTION: 1998 Ky. Acts ch. 556 empowers the Kentucky Board of Dentistry to expend funds it deems necessary to adequately provide for operational expenses of any committee formed pursuant to this section. KRS 313.080 and 313.305 empower the Kentucky Board of Dentistry to set renewal fees for both dentists and dental hygienists in an amount as is necessary to maintain a revolving fund at approximate level of \$150,000. This administrative regulation establishes the renewal fees for dentists and dental hygienists.

Section 1. Fee Schedule. (1) Renewal of dental license - ninety (90) dollars per year.

(2) Renewal of dental hygiene license - thirty-five (35) dollars per year.

HAROLD M. SMITH, DMD, President

MARK BRENGELMAN, Assistant Attorney General

APPROVED BY AGENCY: July 13, 1998

FILED WITH LRC: July 15, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this proposed administrative regulation shall be held on August 28, 1998, at 3 p.m., local time, at 10101 Linn Station Road, Suite 540, Louisville, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 21, 1998, five workdays days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to: Mr. Gary Munsie, Executive Director, Kentucky Board of Dentistry, 10101 Linn Station Road, Suite 540, Louisville, Kentucky 40223, Phone: (502) 423-0573, Fax: (502) 423-1239.

REGULATORY IMPACT ANALYSIS

Contact person: Gary Munsie

(1) Type and number of entities affected: Approximately 2750 licensed dentists and 1400 licensed dental hygienists, who are all required to renew his license by KRS Chapter 313.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: This fee regulation will slightly increase the cost of licensure for dentists and dental hygienists by the amount of \$15 per year for dentists and \$5 per year for dental hygienists.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: This fee regulation will have a negligible financial impact on the cost of doing business for dentists and dental hygienists in Kentucky.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: N/A

2. Second and subsequent years: N/A

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings: This will allow the board to fund its Well-Being Committee for impaired licensees as authorized by 1998 Ky. Acts ch. 556.

1. First year: N/A

2. Continuing costs or savings: N/A

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: N/A

(4) Assessment of anticipated effect on state and local revenues: N/A

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Agency funds and annual budget.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: N/A

(b) Kentucky: N/A

(7) Assessment of alternative methods; reasons why alternatives were rejected: No other mechanism is appropriate for monies to be obtained by the board for funding of statutorily mandated programs such as the Well-Being Committee for impaired licensees.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This fee regulation will allow the agency to fund its statutorily mandated Well-Being Committee for impaired licensees in Kentucky for the protection of the public.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Public health may be harmed by preventing the agency from fulfilling its mandate to carry out its duties for a Well-Being Committee for impaired licensees as no other direct program exists for treating impaired licensees in Kentucky.

(c) If detrimental effect would result, explain detrimental effect: The board would not be able to carry out its statutory mandate to help impaired licensees by establishing and funding the Well-Being committee.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: This amended regulation will conform to KRS 13A.100(3), 313.080, and 313.305.

(11) TIERING: Is tiering applied? No. There are two classes of regulated persons, dentists and dental hygienists. This regulation sets a fee for the renewal of all licenses for dentists and a separate fee for the renewal of all licenses for dental hygienists. Different fees for these two classes of regulated persons is consistent with the separate fees now charged for other licensure services for dentists and dental hygienists.

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Certification for  
Professional Art Therapists  
(New Administrative Regulation)**

**201 KAR 34:030. Continuing education requirements.**

RELATES TO: KRS 309.1335(1)(b)

STATUTORY AUTHORITY: KRS 309.1315(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.1335(1)(b) authorizes the board to promulgate an administrative regulation requiring professional art therapists to complete continuing education requirements as a condition of renewal of their certification. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1. Definitions. As used in this administrative regulation, unless the context otherwise requires:

(1) "Approved" means recognized by the Kentucky Board of Certification of Professional Art Therapists.

(2) "Continuing education hour" means fifty (50) clock minutes of participating in continuing educational experiences.

(3) "Program" means an organized learning experience planned

and evaluated to meet behavioral objectives; programs may be presented in one (1) session or in a series.

(4) "Academic courses offered by an accredited post-secondary institution" means:

(a) An art therapy course, designated by an art therapy course title or content, beyond the undergraduate level; or

(b) An academic course, relevant to professional art therapy, beyond the undergraduate level.

General education courses, either electives or designated to meet degree requirements, shall not be acceptable. Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equals fifteen (15) continuing education hours.

(5) "Relevant" means having content applicable to the practice of professional art therapy as determined by the board. Relevant continuing education activities shall be in the following content areas in order to be considered relevant:

(a) Psychological and psychotherapeutic theories and practice;

(b) Art therapy assessment;

(c) Art therapy theory and practice;

(d) Client populations;

(e) Art theory and media; and

(f) Professionalism and ethics.

(6) "Provider" means an organization approved by the Kentucky Board of Certification for Professional Art Therapists for providing continuing education programs.

(7) "Successful completion" means that the certificate holder has satisfactorily met the specific requirements of the program and the certificate holder has earned the continuing education hours.

Section 2. Accrual of Continuing Education Hours; Computation of Accrual. (1) A minimum of forty (40) continuing education hours shall be accrued by each person holding certification during the two (2) year certification period for renewal.

(2) All hours shall be in or related to the field of professional art therapy.

Section 3. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the certificate shall be directly related to the professional growth and development of a professional art therapy practitioner. They may be earned by completing any of the following educational activities:

(1) Programs not requiring board review and approval. A program provided or approved by any of the following providers shall be deemed to be relevant to the practice of professional art therapy and shall be approved without further review by the board:

(a) The American Art Therapy Association or any of its state affiliates;

(b) The Art Therapy Certification Board;

(c) The American Association of Marriage and Family Therapy and its state affiliates;

(d) The National Association of Social Workers and its state affiliates;

(e) The American Psychological Association and its state affiliates;

(f) The American Counseling Association and its state affiliates;

(g) The National Board of Certified Counselors; and

(h) Academic courses as set forth in Section 1 of this administrative regulation.

(2) Programs requiring board review and approval. A program from any of the following sources shall be reviewed by the board and determined whether it is relevant:

(a) Relevant programs, including home study courses and in-service training provided by other organizations, educational institutions, or other service providers approved by the board;

(b) Relevant programs or academic courses presented by the certificate holder. A presenter of a relevant program or academic course shall earn two (2) continuing education hours for each contact hour of instruction. Credit shall not be issued for repeated instruction of the same course;

(c) Relevant publications in a professionally recognized or juried publication. Continuing education hours shall be granted for relevant publications as follows:

1. Five (5) continuing education hours for each published abstract or book review;

2. Ten (10) continuing education hours for each published article;
3. Twenty (20) continuing education hours for each book chapter or monograph; and
4. Forty (40) continuing education hours for each published book; and
- (d) Exhibitions in a juried art show. An exhibitor at a juried art show shall earn ten (10) continuing education hours for each exhibition.

Section 4. Procedures for Preapproval of Continuing Education Sponsors and Programs. (1) Any entity seeking to obtain approval of a continuing education program prior to its offering shall apply to the board at least sixty (60) days in advance of the commencement of the program, and shall provide the information required in Section 5 of this administrative regulation.

(2) A continuing education activity shall be qualified for approval if the board determines the activity being presented:

- (a) Is an organized program of learning;
- (b) Pertains to subject matters which integrally relate to the practice of art therapy;
- (c) Contributes to the professional competency of the licensee; and
- (d) Is conducted by individuals who have educational training or experience acceptable to the board.

Section 5. Procedures for Approval of Continuing Education Programs. Courses which have not been preapproved by the board may be used for continuing education if approval is secured from the board for such courses. In order for the board to adequately review these programs the following information shall be submitted:

- (1) A published course or seminar description;
- (2) Names and qualifications of the instructors;
- (3) A copy of the program agenda indicating hours of education, coffee and lunch breaks;
- (4) Number of continuing education hours requested;
- (5) Official certificate of completion or college transcript from the sponsoring agency or college; and
- (6) Application for continuing education credits approval.

Section 6. Responsibilities and Reporting Requirements of Certificate Holders. A certificate holder shall be responsible for obtaining required continuing education hours. Each person holding certification shall identify his own continuing education needs, take the initiative in seeking continuing professional education activities to meet these needs, and seek ways to integrate new knowledge, skills and attitudes. Each person holding certification shall:

- (1) Select approved activities by which to earn continuing education hours;
- (2) Submit to the board, when applicable, a request for approval for continuing education activities not approved by the board as set forth in Section 3(2) of this administrative regulation;
- (3) Maintain records of continuing education hours. Each person holding certification shall maintain, for a period of two (2) years from the date of renewal, all documentation verifying successful completion of continuing education hours. During each certification renewal period, up to fifteen (15) percent of all certificate holders shall be required by the board to furnish documentation of the completion of the appropriate number of continuing education hours for the current renewal period. Verification of continuing education hours shall not otherwise be reported to the board;
- (4) Document attendance and participation in a continuing education activity in the form of official documents including transcripts, certificates, affidavits signed by instructors, receipts for fees paid to the sponsor, or less formal evidence including written summaries of experiences that are not otherwise formally or officially documented in any way. The type of documentation required shall vary depending on the specific activity submitted to the board for approval; and
- (5) Fully comply with the provisions of this administrative regulation. Failure to comply shall constitute a violation of KRS 335.340(1)(b) and may result in the refusal to renew, suspension, or revocation of the certification.

Section 7. Carry-over of Continuing Education Hours, Prohibited.

There shall not be a carry-over of continuing education hours earned in excess of those required under Section 2 of this administrative regulation into the immediately following certification renewal period.

Section 8. Board to Approve Continuing Education Hours; Appeal when Approval Denied. In the event of denial, in whole or part, of any application for approval of continuing education hours, the person holding certification shall have the right to request reconsideration by the board of its decision. The request shall be in writing and notice of appeal shall be received by the board within thirty (30) days after the date of the board's decision denying approval of continuing education hours.

Section 9. Waiver or Extensions of Continuing Education. (1) The board may, in individual cases involving medical disability, illness, or undue hardship as determined by the board, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill the same or make the required reports.

(2) A written request for waiver or extension of time involving medical disability or illness shall be submitted by the person holding certification and shall be accompanied by a verifying document signed by a licensed physician.

(3) Waivers of the minimum continuing education requirements or extensions of time within which to fulfill the continuing education requirements may be granted by the board for a period of time not to exceed one (1) calendar year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the person holding certification shall reapply for the waiver or extension.

Section 10. Continuing Education Requirements for Reinstatement or Reactivation of Certification. (1) A person requesting reinstatement or reactivation of certification shall submit evidence of forty (40) hours of continuing education within the twenty-four (24) month period immediately preceding the date on which the request for reinstatement or reactivation is submitted to the board.

(2) The person may request, and the board, at its discretion, may reinstate the certification, with the provision that the person shall receive forty (40) hours continuing education within six (6) months of the date on which the certification is reinstated.

(3) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 2 of this administrative regulation and shall not be used to comply with the requirements of that section.

HELEN L. HEDDENS, Chairman

ROB JONES, Legal Counsel

APPROVED BY AGENCY: July 10, 1998

FILED WITH LRC: July 13, 1998 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1998 at 2:30 p.m. at the offices of the Division of Occupations and Professions located at Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 18, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David L. Nicholas



(1) Type and number of entities affected: All persons certified as professional art therapists.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no costs associated with this regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: There are no costs associated with this regulation.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition for the:

1. First year following implementation: Documentation of continuing education will be required with renewal.

2. Second and subsequent years: Documentation of continuing education will be required with renewal.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Continuing education will have to be reviewed and processed.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Trust and agency funds ordinarily used by the board.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The public will be protected by having professional art therapists receive continuing education.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The credentialing of professional art therapists provides protection to the public.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: It would be more difficult for the board to provide the necessary protection to the public without this regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a or continue to hold a credential. Provisions contained in these administrative regulations provide avenues by which the applicant may appeal actions of the board.

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Certification for  
Professional Art Therapists  
(New Administrative Regulation)**

201 KAR 34:040. Code of ethics.

RELATES TO: KRS 309.1315(14)

STATUTORY AUTHORITY: KRS 309.1315(1), (14)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.1315(14) requires the board to promulgate a code of ethics for

certified professional art therapists. This administrative regulation establishes the required code of ethics.

Section 1. Responsibility to Patients. (1) A professional art therapist shall:

(a) Advance and protect the welfare of the patient;

(b) Respect the rights of persons seeking assistance;

(c) Make reasonable efforts to ensure that services are used appropriately; and

(d) Display a copy of his certificate in the principle place of business.

(2) A professional art therapist shall not:

(a) Discriminate against or refuse professional service to anyone on the basis of race, gender, religion, national origin, or sexual orientation;

(b) Exploit the trust and dependency of a patient;

(c) Engage in a dual relationship with a patient, including a social, business, or personal relationship that may:

1. Impair professional judgment;

2. Incur a risk of exploitation of the patient; or

3. Otherwise violate a provision of this administrative regulation. If a dual relationship cannot be avoided, and does not impair professional judgment, incur a risk of exploitation of the patient, or otherwise violate a provision of this administrative regulation, a therapist shall take appropriate professional precautions to ensure that judgment is not impaired and exploitation of the patient does not occur.

(d) Engage in a sexual relationship with a current patient or with a former patient for two (2) years following the termination of therapy;

(e) Use the professional relationship with a patient to further personal interests;

(f) Continue therapeutic relationships unless it is reasonably clear that the patient is benefiting from the relationship;

(g) Fail to assist a person in obtaining other therapeutic services if the therapist is unable or unwilling, for appropriate reasons, to provide professional help;

(h) Abandon or neglect a patient in treatment without making reasonable arrangements for the continuation of treatment;

(i) Videotape, record, or permit third-party observation of therapy sessions without having first obtained written informed consent from the patient;

(j) Engage in sexual or other harassment or exploitation of a patient, student, trainee, supervisee, employee, colleague, research subject, or actual or potential witness or complainant in investigations and ethical proceedings; or

(k) Diagnose, treat, or advise on problems outside the recognized boundaries of competence.

Section 2. Confidentiality. (1) A professional art therapist shall respect and guard the confidences of each individual patient.

(2) A professional art therapist shall not disclose a patient confidence except:

(a) As mandated, or permitted by law;

(b) To prevent a clear and immediate danger to a person or persons;

(c) If the professional art therapist is a defendant in a civil, criminal, or disciplinary action arising from the therapy, confidences may be disclosed only in the course of that action; or

(d) If written informed consent has been obtained, confidential information shall be revealed only in accordance with the terms of the consent agreement.

(3) A professional art therapist may use patient or clinical materials in teaching, writing, and public presentations if:

(a) Written informed consent has been obtained in accordance with subsection (1)(d) of this section; or

(b) Appropriate steps have been taken to protect patient identity and confidentiality.

(4) A professional art therapist shall store or dispose of patient records so as to maintain confidentiality.

Section 3. Public Use and Reproduction of Patient Art Expression and Therapy Sessions. (1) Art therapists shall obtain written informed consent from the patient or, where applicable, a legal

guardian before photographing patients' art expressions, video taping, audio recording, or otherwise duplicating, or permitting third-party observation of art therapy sessions.

(2) Art therapists shall only use clinical materials in teaching, writing and public presentations if written informed consent has been previously obtained from the patient or, where applicable, a legal guardian. Appropriate steps shall be taken to protect patient identity and disguise any part of the art expression or video tape, which reveals patient identity.

(3) Art therapists shall obtain written, informed consent from the patient or, where applicable, a legal guardian before displaying patients' art in galleries, in mental health facilities, schools, or other public places.

(4) Art therapists shall display patients' art expression in an appropriate and dignified manner.

Section 4. Professional Competence and Integrity. A professional art therapist shall maintain standards of professional competence and integrity and shall be subject to disciplinary action for:

(1)(a) Conviction of a felony, or a misdemeanor related to the practice as a professional art therapist;

(b) Conviction shall include conviction based on:

1. A plea of no contest or an "Alford Plea"; or
2. The suspension or deferral of a sentence;

(2) Having been subject to disciplinary action by another state's regulatory agency that the board determines violates applicable Kentucky state law or administrative regulation;

(3) Impairment due to mental incapacity or the abuse of alcohol or other substances which negatively impact the practice of professional art therapy;

(4) Misrepresentation or concealment of a material fact in obtaining or seeking reinstatement of a certificate;

(5) Refusing to comply with an order issued by the board; or

(6) Failing to cooperate with the board by not:

(a) Furnishing in writing a complete explanation to a complaint filed with the board;

(b) Appearing before the board at the time and place designated; or

(c) Properly responding to subpoenas issued by the board.

Section 5. Responsibility to a Student or Supervisee. (1) A professional art therapist shall not exploit the trust and dependency of a student or supervisee.

(2) A professional art therapist shall:

(a) Be aware of his influential position with respect to a student or supervisee; and

(b) Avoid exploiting the trust and dependency of these persons.

1. A professional art therapist shall make every effort to avoid a dual relationship, including a social, business, or personal relationship, with a student or supervisee that may impair professional judgment or increase the risk of exploitation.

2. If a dual relationship cannot be avoided, a therapist shall take appropriate professional precautions to ensure judgment is not impaired and no exploitation occurs.

3. A therapist shall not provide therapy to a student, employee or supervisee.

4. A therapist shall not engage in sexual intimacy or contact with a student or supervisee.

(3) A professional art therapist shall not permit a student or supervisee to perform or to hold himself out as competent to perform professional services beyond his level of training, experience, and competence.

(4) A professional art therapist shall not disclose a student's or supervisee's confidence except:

(a) As mandated, or permitted by law;

(b) To prevent a clear and immediate danger to a person or persons;

(c) If the therapist is a defendant in a civil, criminal, or disciplinary action arising from the supervision;

(d) In educational or training settings if there are multiple supervisors, to other professional colleagues who share responsibility for the training of the supervisee; or

(e) If there is written informed consent previously obtained in writing, information shall be revealed only in accordance with the

terms of the consent agreement.

Section 6. Responsibility to Research Participants. (1) A professional art therapist performing research shall be aware of federal and state laws and regulations and professional standards governing the conduct of research.

(2) A professional art therapist performing research shall be responsible for making careful examinations of ethical acceptability in planning studies. To the extent that services to research participants may be compromised by participation in research, a professional art therapist, shall seek the ethical advice of qualified professionals not directly involved in the investigation and shall observe safeguards to protect the rights of research participants.

(3) A professional art therapist requesting participants' involvement in research shall inform them of all aspects of the research that might reasonably be expected to influence willingness to participate. A professional art therapist shall be sensitive to the possibility of diminished consent when participants are also receiving clinical services, have impairments which limit understanding or communication, or when participants are children.

(4) A professional art therapist performing research shall respect participants' freedom to decline participation in or to withdraw from a research study at any time. This obligation requires special thought and consideration when a professional art therapist or other member of the research team is in a position of authority or influence over participants.

(5) A professional art therapist shall avoid dual relationships with research participants.

(6) Information obtained about a research participant during the course of an investigation shall be confidential unless there is an authorization previously obtained in writing. When there is a risk that others, including family members, may obtain access to such information, this risk, together with the plan for protecting confidentiality, is to be explained as part of the procedure for obtaining written informed consent.

Section 7. Financial Arrangements. (1) A professional art therapist shall make financial arrangements with a patient, third-party payor, or supervisee that are reasonably understandable and conform to accepted professional practices.

(2) A professional art therapist shall:

(a) Not offer or accept payment for referrals;

(b) Not charge excessive fees for services;

(c) Disclose his fees to clients and supervisees at the beginning of services; or

(d) Represent facts truthfully to clients, third-party payors, and supervisees regarding services rendered.

Section 8. Advertising. A professional art therapist shall:

(1) Accurately represent education, training, and experience relevant to the practice of professional art therapy;

(2) Not use professional identification, including a business card, office sign, letterhead, or telephone or association directory listing if it includes a statement or claim that is false, fraudulent, misleading, or deceptive.

(3) A statement shall be false, fraudulent, misleading, or deceptive if it:

(a) Contains a material misrepresentation of fact;

(b) Fails to state any material fact necessary to make the statement, in light of all circumstances, not misleading; or

(c) Is intended to or is likely to create an unjustified expectation.

Section 9. Environment. A professional art therapist shall provide a safe, functional environment in which to offer art therapy services. This includes the following:

(1) Proper ventilation;

(2) Knowledge of hazards or toxicity of art materials, and the effort needed to safeguard the health of clients;

(3) Storage space for art projects and secured areas for any hazardous materials;

(4) Monitored use of sharps;

(5) Allowance for privacy and confidentiality; and

(6) Compliance with any other health and safety requirement according to local, state, and federal agencies.

## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

Section 10. Documentation. A professional art therapist shall accurately document activity with patients.

HELEN L. HEDDENS, Chairman  
ROB JONES, Legal Counsel

APPROVED BY AGENCY: July 10, 1998

FILED WITH LRC: July 13, 1998 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1998 at 2:30 p.m. at the offices of the Division of Occupations and Professions located at Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 18, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

### REGULATORY IMPACT ANALYSIS

Contact Person: David L. Nicholas

(1) Type and number of entities affected: All persons certified as professional art therapists.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no costs associated with this regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: There are no costs associated with this regulation.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition for the:

1. First year following implementation: Certificate holders will be required to follow the code of ethics.

2. Second and subsequent years: Certificate holders will be required to follow the code of ethics.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Trust and agency funds ordinarily used by the board.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The public will be protected by having professional art therapists function under a code of ethics.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The credentialing of professional art therapists provides protection to the public.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: It would be more difficult for the board to provide the necessary protection to the public without this regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a or continue to hold a credential. Provisions contained in these administrative regulations provide avenues by which the applicant may appeal actions of the board.

### GENERAL GOVERNMENT CABINET Kentucky Board of Certification for Professional Counselors (New Administrative Regulation)

#### 201 KAR 36:020. Fees – renewal date.

RELATES TO: KRS 335.525(2), 335.530(1), (2), (4)

STATUTORY AUTHORITY: KRS 335.515(3)

NECESSITY, FUNCTION, AND CONFORMITY: This administrative regulation is necessitated by KRS 335.525(2), 335.530(1), (2), and (4) and sets forth in detail all fees charged by the board and the date on which a certificate is to be renewed.

Section 1. Application Fee. (1) The application fee for certification as a professional counselor shall be \$150.

(2) If the application is denied, \$125 of the application fee shall be refunded.

Section 2. Renewal Fees and Penalties. (1) The annual renewal fee for certification shall be \$150;

(2) The late renewal fee for late renewal during the sixty (60) day grace period shall be twenty-five (25) dollars; and

(3) The reinstatement fee for licensure or certification renewal after the end of the sixty (60) day grace period shall be fifty (50) dollars.

(4) Renewal and reinstatement fees shall not be refundable.

Section 3. Renewal Date. (1) The renewal date for certification shall be October 31.

(2) The renewal fee for the first renewal shall be waived for a person receiving certification within 120 days prior to the renewal date.

TIMOTHY C. ROBERTSON, M.A., Chairman  
JAMES GRAWE, Legal Counsel

APPROVED BY AGENCY: July 13, 1998

FILED WITH LRC: July 13, 1998 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1998 at 1:30 p.m. at the offices of the Division of Occupations and Professions located at Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 18, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

REGULATORY IMPACT ANALYSIS

Contact Person: David L. Nicholas

(1) Type and number of entities affected: All persons applying to be certified or who are certified as professional counselors in Kentucky.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: Those persons applying for certification or renewing certification will be impacted.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition for the:

1. First year following implementation: Certificate holders will be required to renew certification and to pay the required renewal fee.

2. Second and subsequent years: Certificate holders will be required to renew certification and to pay the required renewal fee.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Application fees will provide initial funding for board operation.

2. Continuing costs or savings: Application and renewal fees will provide continuing funding for board operation.

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Applications and renewals will be processed.

(4) Assessment of anticipated effect on state and local revenues: These funds will provide the only funding for board operation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: These funds will provide the only funding for board operation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: Minimal

(7) Assessment of alternative methods; reasons why alternatives were rejected: These are the only sources of funding as set forth by the statute.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: This regulation will assist in insuring the competence of persons holding themselves out as professional counselors.

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: None

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a certificate as a professional counselor. Therefore there is no need to tier this regulation.

GENERAL GOVERNMENT CABINET  
Kentucky Board of Certification for  
Professional Counselors  
(New Administrative Regulation)

201 KAR 36:030. Continuing education requirements.

RELATES TO: KRS 335.535(8)

STATUTORY AUTHORITY: KRS 335.515(3)(6), 335.535(8)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.535(8) authorizes the board to promulgate an administrative regulation requiring a certified professional counselor to complete continuing education requirements as a condition of renewal of his certification. This administrative regulation delineates the requirements for continuing education and prescribes methods and standards for the accreditation of continuing education courses.

Section 1: Definitions. As used in this administrative regulation, unless the context otherwise requires:

(1) "Approved" means recognized by the Kentucky Board of Certification for Professional Counselors.

(2) "Continuing education hour" means fifty (50) clock minutes of participating in continuing educational experiences.

(3) "Program" means an organized learning experience planned and evaluated to meet behavioral objectives; programs may be presented in one (1) session or in a series.

(4) "Academic courses offered by an accredited postsecondary institution" means:

(a) A professional counseling course designated by a professional counseling title or content; or

(b) An academic course, relevant to professional counseling.

(c) A general education course, either electives or designed to meet degree requirements, shall not be acceptable.

(d) Academic credit equivalency for continuing education hours shall be based on one (1) credit hour equals fifteen (15) continuing education hours.

(5) "Relevant" means having content applicable to the practice of professional counseling as determined by the board.

(6) "Provider" means an organization approved by the Kentucky Board of Certification for Professional Counselors for providing continuing education programs.

Section 2. Accrual of Continuing Education Hours; Computation of Accrual. (1) A minimum of ten (10) continuing education hours shall be accrued by each person holding certification during the annual period for renewal.

(2) All continuing education hours shall be in or related to the field of professional counseling.

Section 3. Methods of Acquiring Continuing Education Hours. Continuing education hours applicable to the renewal of the license shall be directly related to the professional growth and development of a certified professional counselor. They may be earned by completing any of the following educational activities:

(1) Programs not requiring board review and approval. An educational program from any of the following providers shall be deemed to be relevant to the practice of professional counseling and shall be approved without further review by the board if it is:

(a) Sponsored or approved by the National Board for Certified Counselors;

(b) Sponsored by:

1. The American Counseling Association, or any of its affiliated branches or divisions;

2. The Kentucky Counseling Association, or any of its affiliated chapters or divisions;

3. The National Association of Social Workers or any of its affiliated state chapters;

4. The American Association of Marriage and Family Therapy or any of its affiliated state chapters;

5. The National Association of School Counselors or any of its affiliated state chapters;

6. The American Psychological Association, or any of its affiliated state chapters or divisions;

(c) An academic course offered by an accredited post-

secondary institution directly related to professional counseling or counseling psychology;

(2) Programs requiring board review and approval. A program from any of the following sources shall be reviewed and determined if it is relevant and therefore subsequently approved by the board:

(a) Relevant programs, including home study and in-service training provided by other organizations, educational institutions, or other service providers approved by the board;

(b) Relevant programs or academic courses presented by the certificand. A presenter of relevant programs or academic courses may earn full continuing education credit for each contact hour of instruction, not to exceed one-half (1/2) of the continuing education renewal requirements. Credit shall not be issued for repeated instruction of the same course;

(c) Authoring an article in a relevant, professionally recognized or juried publication. Credit may be granted only for an article that was published within the one (1) year period immediately preceding the renewal date. A certificand may only earn one-half (1/2) of the continuing education hours required for renewal. Only one (1) publication may be counted during each renewal period.

Section 4. Procedures for Approval of Continuing Education Programs. A course, which has not been preapproved by the board, may be used for continuing education if approval is secured from the board for the course. In order for the board to adequately review these programs, the following information shall be submitted:

- (1) A published course or similar description;
- (2) Names and qualifications of the instructors;
- (3) A copy of the program agenda indicating hours of education, coffee and lunch breaks;
- (4) Number of continuing education hours requested;
- (5) Official certificate of completion or college transcript from the sponsoring agency or college; and
- (6) Application for continuing education credits approval.

Section 5. Procedures for Preapproval of Continuing Education Sponsors and Programs. (1) Sponsor approval. Any entity seeking to obtain approval:

(a) Of a continuing education program prior to its offering shall apply to the board at least sixty (60) days in advance of the commencement of the program, and shall provide the information required in Section 4 of this administrative regulation.

(b) As a prior-authorized continuing education provider under Section 3(1) of this administrative regulation, shall satisfy the board that the entity seeking this status:

1. Consistently offers programs which meet or exceed all the requirements set forth in Section 2 of this administrative regulation; and

2. Does not exclude any certificand from its programs.

(2) A continuing education activity shall be qualified for approval if the board determines the activity being presented:

- (a) Is an organized program of learning;
- (b) Pertains to subject matters, which integrally relate to the practice of professional counseling;
- (c) Contributes to the professional competency of the certificand; and
- (d) Is conducted by individuals who have educational training or experience acceptable to the board.

Section 6. Responsibilities and Reporting Requirements of Certificands. Each certificand shall be responsible for obtaining required continuing education hours. He shall identify his own continuing education needs, take the initiative in seeking continuing professional education activities to meet these needs, and seek ways to integrate new knowledge, skills and attitudes. Each person holding certification shall:

(1) Select approved activities by which to earn continuing education hours;

(2) Submit to the board, when applicable, a request for continuing education activities requiring approval by the board as established in Section 4 of this administrative regulation;

(3) Maintain his own records of continuing education hours;

(4) At the time of renewal, list the continuing education hours obtained during that licensure renewal period;

(5) Furnish documentation of attendance and participation in the appropriate number of continuing education hours at the time of his renewal, as follows:

(a) Each person holding certification shall maintain, for a period of one (1) year from the date of renewal, all documentation verifying successful completion of continuing education hours;

(b) During the annual certification renewal period, up to fifteen (15) percent of all certificands shall be required by the board to furnish documentation of the completion of the appropriate number of continuing education hours for the current renewal period;

(c) Verification of continuing education hours shall not otherwise be reported to the board;

(d) Documentation sent in to the board prior to renewal shall be returned to the certificand by regular mail;

(e) Documentation shall take the form of official documents including:

1. Transcripts;
  2. Certificates;
  3. Affidavits signed by instructors; or
  4. Receipts for fees paid to the sponsor; and
- (f) Each licensee shall retain copies of his documentation.

Section 7. Responsibilities and Reporting Requirements of Providers and Sponsors. (1) Providers of continuing education not requiring board approval shall be responsible for providing documentation, as established in Section 5(4) of this administrative regulation, directly to the certificand.

(2) Sponsors of continuing education requiring board approval shall be responsible for submitting a course offering to the board for review and approval before listing or advertising that offering as approved by the board.

Section 8. Board to Approve Continuing Education Hours; Appeal when Approval Denied. In the event of denial, in whole or part, of any application for approval of continuing education hours, the licensee shall have the right to request reconsideration by the board of its decision. The request shall be in writing and shall be received by the board within thirty (30) days after the date of the board's decision denying approval of continuing education hours.

Section 9. Waiver or Extensions of Continuing Education. (1) The board may, in individual cases involving medical disability, illness, or undue hardship as determined by the board, grant waivers of the minimum continuing education requirements or extensions of time within which to fulfill the requirements or make the required reports.

(2) A written request for waiver or extension of time involving medical disability or illness shall be submitted by the person holding certification and shall be accompanied by a verifying document signed by a licensed physician.

(3) Waivers of the minimum continuing education requirements or extensions of time within which to fulfill the continuing education requirements may be granted by the board for a period of time not to exceed one (1) calendar year.

(4) If the medical disability or illness upon which a waiver or extension has been granted continues beyond the period of the waiver or extension, the person holding certification shall reapply for the waiver or extension.

Section 10. Continuing Education Requirements for Reinstatement or Reactivation of Certification. (1) A person requesting reinstatement or reactivation of certification shall submit evidence of ten (10) hours of continuing education within the twelve (12) month period immediately preceding the date on which the request for reinstatement or reactivation is submitted to the board.

(2) The person may request, and the board, at its discretion, may reinstate the certification, with the provision that the person shall receive ten (10) hours continuing education within six (6) months of the date on which the certification is reinstated.

(3) The continuing education hours received in compliance with this section shall be in addition to the continuing education requirements established in Section 2 of this administrative regulation and shall not be used to comply with the requirements of that section.

TIMOTHY C. ROBERTSON, Chairman

JAMES GRAWE, Legal Counsel

APPROVED BY AGENCY: July 10, 1998

FILED WITH LRC: July 13, 1998 at 4 p.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on August 25, 1998 at 1:30 p.m. at the offices of the Division of Occupations and Professions located at Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 18, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

#### REGULATORY IMPACT ANALYSIS

Contact Person: David L. Nicholas

(1) Type and number of entities affected: All persons certified as professional counselors.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no costs associated with this regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments are received: There are no costs associated with this regulation.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition for the:

1. First year following implementation: Documentation of continuing education will be required with renewal.

2. Second and subsequent years: Documentation of continuing education will be required with renewal.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Continuing education will have to be reviewed and processed.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Trust and agency funds ordinarily used by the board.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: Having professional counselors receive continuing education will protect the public.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The credentialing of professional counselors provides protection to the public.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: It would be more difficult for the board to provide the necessary pro-

tection to the public without this regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. If no, please explain why tiering was not applied: Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a or continue to hold a credential. Provisions contained in these administrative regulations provide avenues by which the applicant may appeal actions of the board.

#### GENERAL GOVERNMENT CABINET Kentucky Board of Certification for Professional Counselors (New Administrative Regulation)

#### 201 KAR 36:040. Code of ethics.

RELATES TO: KRS 335.515(11), 335.540(1)(g)

STATUTORY AUTHORITY: KRS 335.515(3), (11)

NECESSITY AND FUNCTION: KRS 335.515(11) requires the board to promulgate a code of ethics for certified professional counselors. This administrative regulation establishes the required code of ethics.

Section 1. Responsibility to Clients. (1) A professional counselor shall:

(a) Advance and protect the welfare of his client;

(b) Respect the rights of persons seeking his assistance; and

(c) Make reasonable efforts to ensure that his services are used appropriately.

(2) A professional counselor shall not:

(a) Discriminate against or refuse professional service to anyone on the basis of race, gender, religion, or national origin;

(b) Exploit the trust and dependency of a client;

(c) Engage in a dual relationship with a client, including a social, business, or personal relationship that may:

1. Impair professional judgment;

2. Incur a risk of exploitation of the client; or

3. Otherwise violate a provision of this administrative regulation.

If a dual relationship cannot be avoided, and does not impair professional judgment, incur a risk of exploitation of the client, or otherwise violate a provision of this administrative regulation, a professional counselor shall take appropriate professional precautions to ensure that judgment is not impaired and exploitation of the client does not occur.

(d) Engage in a sexual relationship with a current client or with a former client for two (2) years following the termination of counseling;

(e) Use his professional relationship with a client to further his own interests;

(f) Continue therapeutic relationships unless it is reasonably clear that the client is benefiting from the relationship;

(g) Fail to assist a person in obtaining other therapeutic services if the professional counselor is unable or unwilling, for appropriate reasons, to provide professional help;

(h) Abandon or neglect a client in treatment without making reasonable arrangements for the continuation of treatment;

(i) Videotape, record, or permit third-party observation of counseling sessions without having first obtained written informed consent from the client;

(j) Engage in sexual or other harassment or exploitation of his client, student, trainee, supervisee, employee, colleague, research subject, or actual or potential witness or complainant in investigations and ethical proceedings; or

(k) Diagnose, treat, or advise on problems outside the recognized boundaries of his competence.

Section 2. Confidentiality. (1) A professional counselor shall



respect and guard the confidences of each individual client.

(2) Professional counselors shall not disclose a client confidence except:

(a) As mandated, or permitted by law;  
(b) To prevent a clear and immediate danger to a person or persons;

(c) If the professional counselor is a defendant in a civil, criminal, or disciplinary action arising from the counseling, confidences may be disclosed only in the course of that action; or

(d) If a waiver has been obtained in writing, confidential information shall be revealed only in accordance with the terms of the waiver. If more than one (1) person in a family receives counseling, unless a waiver is executed by each family member receiving counseling, who is legally competent to execute a waiver, a professional counselor shall not disclose information received from any family member.

(3) A professional counselor may use client or clinical materials in teaching, writing, and public presentations if:

(a) A written waiver has been obtained in accordance with subsection (1)(d) of this section; or

(b) Appropriate steps have been taken to protect client identity and confidentiality.

(4) A professional counselor shall store or dispose of client records so as to maintain confidentiality.

Section 3. Professional Competence and Integrity. A professional counselor shall maintain standards of professional competence and integrity and shall be subject to disciplinary action:

(1)(a) Upon conviction of a felony, or a misdemeanor related to his practice as a professional counselor;

(b) Conviction shall include adjudication based on:

1. A plea of no contest or an "Alford Plea"; or
2. The suspension or deferral of a sentence.

(2) If his license or certificate is subject to disciplinary action by another state's regulatory agency that the board determines violates applicable Kentucky state law or administrative regulation;

(3) Upon a showing of impairment due to mental incapacity or the abuse of alcohol or other substances which negatively impact the practice of professional counseling;

(4) If he misrepresented or concealed a material fact in obtaining a certificate, renewing a certificate, or reinstating a certificate;

(5) If he has refused to comply with an order issued by the board; or

(6) He has failed to cooperate with the board by not:

(a) Furnishing in writing a complete explanation to a complaint filed with the board;

(b) Appearing before the board at the time and place designated; or

(c) Properly responding to subpoenas issued by the board.

Section 4. Responsibility to His Student or Supervisee. (1) A professional counselor shall not exploit the trust and dependency of his student or supervisee.

(2) A professional counselor shall:

(a) Be aware of his influential position with respect to his student or supervisee; and

(b) Avoid exploiting the trust and dependency of these persons.

1. A professional counselor shall make every effort to avoid a dual relationship, including a social, business, or personal relationship, with his student or supervisee that may impair professional judgment or increase the risk of exploitation.

2. If a dual relationship cannot be avoided, a professional counselor shall take appropriate professional precautions to ensure judgment is not impaired and no exploitation occurs.

3. A professional counselor shall not provide counseling to his student, employee or supervisee.

4. A professional counselor shall not engage in sexual intimacy or contact with his student or supervisee.

(3) A professional counselor shall not permit his student or supervisee to perform or to hold himself out as competent to perform professional services beyond his level of training, experience, and competence.

(4) A professional counselor shall not disclose his student's or supervisee's confidence except:

(a) As mandated, or permitted by law;

(b) To prevent a clear and immediate danger to a person or persons;

(c) If the professional counselor is a defendant in a civil, criminal, or disciplinary action arising from the supervision, the student's or supervisee's confidence may be disclosed only in the course of that action;

(d) To other professional colleagues who share responsibility for the training of the supervisee in educational or training settings if there are multiple supervisors; or

(e) If there is a waiver previously obtained in writing, information shall be revealed only in accordance with the terms of the waiver.

Section 5. Financial Arrangements. (1) A professional counselor shall make financial arrangements with a client, third-party payor, or supervisee that are reasonably understandable and conform to accepted professional practices.

(2) A professional counselor shall:

(a) Not offer or accept payment for referrals;

(b) Not charge excessive fees for services;

(c) Disclose his fees to clients and supervisees at the beginning of services; or

(d) Represent facts truthfully to clients, third-party payors, and supervisees regarding services rendered.

Section 6. Advertising. A professional counselor shall:

(1) Accurately represent his education, training, and experience relevant to his practice of professional counseling;

(2) Not use professional identification, including a business card, office sign, letterhead, or telephone or association directory listing if it includes a statement or claim that is false, fraudulent, misleading, or deceptive.

(3) A statement shall be false, fraudulent, misleading, or deceptive if it:

(a) Contains a material misrepresentation of fact;

(b) Fails to state any material fact necessary to make the statement, in light of all circumstances, not misleading; or

(c) Is intended to or is likely to create an unjustified expectation.

TIMOTHY C. ROBERTSON, M.A., Chairman

JAMES GRAWE, Legal Counsel

APPROVED BY AGENCY: July 10, 1998

FILED WITH LRC: July 13, 1998 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1998 at 1:30 p.m. at the offices of the Division of Occupations and Professions located at Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 18, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

#### REGULATORY IMPACT ANALYSIS

Contact person: David Nicholas

(1) Type and number of entities affected: All persons certified as professional counselors.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no costs associated with this regulation.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent avail-

able from the public comments are received: There are no costs associated with this regulation.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition for the:

1. First year following implementation: Certificate holders will be required to comply with the requirements of the complaint management process.

2. Second and subsequent years: Certificate holders will be required to comply with the requirements of the complaint management process.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Trust and agency funds ordinarily used by the board.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The public will be protected by having professional counselors function under a code of ethics.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The credentialing of professional counselors provides protection to the public.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: It would be more difficult for the board to provide the necessary protection to the public without this regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. If no, please explain why tiering was not applied: Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a or continue to hold a credential. Provisions contained in these administrative regulations provide avenues by which the applicant may appeal actions of the board.

**GENERAL GOVERNMENT CABINET  
Kentucky Board of Certification for  
Professional Counselors  
(New Administrative Regulation)**

**201 KAR 36:050. Complaint management process.**

RELATES TO: KRS 335.540, 335.545

STATUTORY AUTHORITY: KRS 335.515(3), (7), 335.540

NECESSITY, FUNCTION, AND CONFORMITY: KRS 335.515(7) and 335.540 authorize the board to take disciplinary action in regard to a certificand or to refuse to issue a certification under certain circumstances. A complaint or other information coming to the board requires the board to investigate persons engaging in practices that violate the provisions of KRS 335.500 to 335.599. This administrative regulation establishes the detailed procedures for the investigation of complaints received by the board.

Section 1. Definitions. (1) "Chairman" means the chairman or vice-chairman of the board.

(2) "Charge" means a specific allegation contained in a formal complaint, as established in subsection (4) of this section, issued by the board alleging a violation of a specified provision of KRS 335.500 to 335.599; the administrative regulations promulgated thereunder; or any other state or federal statute or regulation.

(3) "Complaint" means any written allegation of misconduct by a credentialed individual or other person which might constitute a violation of KRS 335.500 to 335.599, the administrative regulations promulgated thereunder, or any other state or federal statute or regulation.

(4) "Formal complaint" means a formal administrative pleading authorized by the board which sets forth charges against a licensed individual or other person and commences a formal disciplinary proceeding pursuant to KRS Chapter 13B or requests the court to take criminal or civil action.

(5) "Informal proceedings" means the proceedings instituted at any stage of the disciplinary process with the intent of reaching a dispensation of any matter without further recourse to formal disciplinary procedures under KRS Chapter 13B.

(6) "Investigator" means an individual designated by the board to assist the board in the investigation of a complaint or an investigator employed by the Attorney General or the board.

(7) "Complaint screening committee" means a committee consisting of three (3) persons appointed by the chairman of the board to review complaints, investigative reports, and to participate in informal proceedings to resolve a formal complaint. The executive director of the board or another staff member may be appointed to serve on this committee.

Section 2. Receipt of Complaints. (1) Complaints may be submitted by an individual, organization, or entity. Complaints shall be in writing and shall be signed by the person offering the complaint. The board may also file a complaint based on information in its possession.

(2) Upon receipt of a complaint:

(a) A copy of the complaint shall be sent to the individual named in the complaint along with a request for that individual's response to the complaint. The individual shall be allowed a period of twenty (20) days from the date of receipt to submit a written response.

(b) Upon receipt of the written response of the individual named in the complaint, a copy of his response shall be sent to the complainant. The complainant shall have seven (7) days from the receipt to submit a written reply to the response.

Section 3. Initial Review. (1) After the receipt of a complaint and the expiration of the period for the individual's response, the complaint screening committee shall consider the individual's response, complainant's reply to the response, and any other relevant material available and make a recommendation to the board. The board shall determine whether there is enough evidence to warrant a formal investigation of the complaint.

(2) When in the opinion of the board a complaint does not warrant the formal investigation of a complaint against an individual, the board shall dismiss the complaint and shall notify both the complaining party and the individual of the outcome of the complaint.

(3) When in the opinion of the board a complaint warrants a formal investigation against either a certified individual or a person who may be in violation of KRS 335.505, the board shall authorize an investigator to investigate the matter and make a report to the complaint screening committee at the earliest opportunity.

Section 4. Results of Formal Investigation; Board Decision on Hearing. (1) Upon completion of the formal investigation, the investigator shall submit a report to the complaint screening committee of the facts regarding the complaint. The committee shall review the investigative report and make a recommendation to the board. The board shall determine whether there has been a prima facie violation of KRS 335.500 to 335.599 or the administrative regulations promulgated thereunder and a complaint should be filed.

(2) When in the opinion of the board a complaint does not warrant the issuance of a formal complaint, the complaint shall be dismissed or other appropriate action taken pursuant to KRS

335.540(3). The board shall notify both the complaining party and the individual of the outcome of the complaint.

(3) When in the opinion of the board a complaint warrants the issuance of a formal complaint against a certificand, the complaint screening committee shall prepare a formal complaint which states clearly the charge or charges to be considered at the hearing. The formal complaint shall be reviewed by the board and, if approved, signed by the chairman and served upon the individual as required by KRS Chapter 13B.

(4) When in the opinion of the board a person may be in violation of KRS 335.505, it may:

(a) Order the individual to cease and desist from further violations of KRS 335.505;

(b) Forward information to the county attorney of the county of residence of the person allegedly violating KRS 335.505 with a request that appropriate action be taken under KRS 335.599; or

(c) Initiate action in Franklin Circuit Court for injunctive relief to stop the violation of KRS 335.505.

Section 5. Settlement by Informal Proceedings. (1) The board, through counsel and the complaint screening committee, may, at any time during this process, enter into informal proceedings with the individual who is the subject of the complaint for the purpose of appropriately dispensing with the matter.

(2) Any agreed order or settlement reached through this process shall be approved by the board and signed by the individual who is the subject of the complaint and the chairman.

(3) The board may employ mediation as a method of resolving the matter informally.

Section 6. Notice and Service Process. Any notice required by KRS 335.500 to 335.599 or this administrative regulation shall be issued pursuant to KRS Chapter 13B.

Section 7. Notification. The board shall make public:

(1) Its final order in a disciplinary action under KRS 335.540 with the exception of a written admonishment issued pursuant to KRS 335.540(3); and

(2) Any action to restrain or enjoin a violation of KRS 335.505.

TIMOTHY C. ROBERTSON, M.A., Chairman

JAMES GRAWE, Legal Counsel

APPROVED BY AGENCY: July 10, 1998

FILED WITH LRC: July 13, 1998 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 25, 1998 at 1:30 p.m. at the offices of the Division of Occupations and Professions located at Berry Hill Annex, 700 Louisville Road, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 18, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: Mr. David L. Nicholas, Director, Division of Occupations and Professions, P.O. Box 456, Frankfort, Kentucky 40602, (502) 564-3296.

#### REGULATORY IMPACT ANALYSIS

Contact Person: David L. Nicholas

(1) Type and number of entities affected: All persons certified as professional counselors.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: There are no costs associated with this regulation.

(b) Cost of doing business in the geographical area in which the

administrative regulation will be implemented, to the extent available from the public comments are received: There are no costs associated with this regulation.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition for the:

1. First year following implementation: Certificate holders will be required to comply with the requirements of the complaint management process.

2. Second and subsequent years: Certificate holders will be required to comply with the requirements of the complaint management process.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Trust and agency funds ordinarily used by the board.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: The public will be protected by having professional counselors function under a complaint management process.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: The credentialing of professional counselors provides protection to the public.

(b) State whether a detrimental effect on environment and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: It would be more difficult for the board to provide the necessary protection to the public without this regulation.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: None

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Was tiering applied: No. If no, please explain why tiering was not applied: Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals desiring to obtain a or continue to hold a credential. Provisions contained in these administrative regulations provide avenues by which the applicant may appeal actions of the board.

#### TOURISM DEVELOPMENT CABINET Department of Fish and Wildlife Resources (New Administrative Regulation)

#### 301 KAR 2:179. State park deer hunts.

RELATES TO: KRS 148.029(5), 150.025(2), 150.105, 150.360, 150.390, 150.640(1), 150.710

STATUTORY AUTHORITY: KRS 148.029(5), 150.105, 150.025(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 148.029(5) authorizes the Department of Parks, in cooperation with the Department of Fish and Wildlife Resources, to remove, destroy, or disturb wildlife on state parks. KRS 150.105 authorizes the Department of Fish and Wildlife Resources to authorize the destruction of animals that are causing damage to property or spreading disease. KRS 150.025(1) authorizes the Department of Fish and Wild-

life to open seasons and make those seasons apply to a limited area of the state. This administrative regulation is necessary to allow controlled deer hunting at selected state parks to relieve serious overpopulations of white-tailed deer that are damaging the ecological integrity of the parks.

Section 1. Hunting for either antlered or antlerless deer shall be allowed:

- (1) On December 5 and 6, 1998, at:
  - (a) Grayson Lake State Park; and
  - (b) Taylorsville Lake State Park.
- (2) On January 5 and 6, 1999, at:
  - (a) Barren River Lake State Resort Park;
  - (b) Dale Hollow State Resort Park;
  - (c) Greenbo Lake State Resort Park; and
  - (d) Lake Cumberland State Resort Park.
- (3) On January 12 and 13, 1999, at Dale Hollow State Resort Park.

Section 2. A person shall not hunt on a state park unless he:

- (1) Was selected by a random drawing pursuant to 301 KAR 2:181E; or
- (2) Is a member of the successful applicant's hunting party.

Section 3. (1) A person shall check in:

- (a) Between 4 p.m. and 10 p.m. on the day before the hunt; or
- (b) After 5 a.m. on the day of the hunt;
- (c) By furnishing:
  1. The authorization number as specified in 301 KAR 2:181E, showing that he was a successful applicant for the hunt; and
  2. A driver's license or other form of personal identification.
- (2) A member of the successful applicant's party shall check in with the applicant.
- (3) When checking in, a successful applicant or a member of his party shall show:
  - (a) A valid 1998 deer permit with an unfilled carcass tag; or
  - (b) A valid quota hunt deer permit with an unused carcass tag; and
  - (c) Unless exempt from licensing requirements by KRS 150.170, a valid Kentucky:
    1. Resident hunting license;
    2. Resident combination hunting and fishing license; or
    3. Annual nonresident hunting license.

Section 6. A person participating in the hunt:

- (1) Shall:
  - (a) Wear hunter orange as required by 301 KAR 2:172(12);
  - (b) Check deer taken at the designated park check station;
  - (c) Check out before leaving the park; and
  - (d) Obey the provisions of 301 KAR 2:172(10) and (13).
- (2) Shall not:
  - (a) Use a firearm, archery equipment or crossbow prohibited by 301 KAR 2:172;
  - (b) Take more than one (1) deer;
  - (c) Take a white deer at Dale Hollow State Resort Park;
  - (d) Tag an antlered deer with an "antlerless only" tag;
  - (e) Injure a tree by using:
    1. A tree stand except a portable stand;
    2. Climbing devices which nail or screw to the tree; or
    3. Climbing spikes.
  - (g) Discharge a firearm within 100 feet of a maintained road;
  - (h) Hunt:
    1. In an area posted as closed by signs; or
    2. Outside the park boundaries.

Pursuant to KRS 13A.1120(3), the Department of Parks and the Department of Fish and Wildlife Resources have reviewed and approved this administrative regulation to implement the provisions of KRS 148.029(5) for the removal of deer from selected state parks where excessive deer numbers are damaging local ecosystems.

Kenny Rapier, Commissioner  
Department of Parks

C. Thomas Bennett, Commissioner  
Department of Fish and Wildlife Resources

C. THOMAS BENNETT, Commissioner

MIKE BOATWRIGHT, Chairman

ANN R. LATTA, Secretary

DOUGLAS SCOTT PORTER, Assistant Attorney General

APPROVED BY AGENCY: March 6, 1998

FILED WITH LRC: July 15, 1998 at 11 a.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 28, 1998 at 9 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by August 21, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to: John Wilson, Department of Fish and Wildlife Resources, Arnold L. Mitchell Building, #1 Game Farm Road, Frankfort, Kentucky 40601, (502) 564-4406, FAX (502) 564-6508.

#### REGULATORY IMPACT ANALYSIS

Contact Person: John Wilson

(1) Type and number of entities affected: Approximately 475 hunters will be selected for these deer hunts.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. No impact on cost of living or employment.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received. No impact on costs of doing business.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: Applicants must call a toll-free application hot-line and pay a three (3) dollar application fee.

2. Second and subsequent years: Same as first year.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Cost of personnel time to monitor hunts.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None.

(b) Reporting and paperwork requirements: None

(4) Assessment of anticipated effect on state and local revenues: No effect on revenue.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Fish and Game Fund

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: These days of deer hunting will increase travel and tourism to the region, increase visitation to the state park lodge and area motels, restaurants, and other businesses.

(b) Kentucky: No impact.

(7) Assessment of alternative methods; reasons why alternatives were rejected: Not reducing deer numbers was rejected because allowing deer populations to increase beyond their present levels would cause serious environmental problems throughout these parks. Trapping and relocating was rejected as an alternative because not enough deer could be removed to alleviate the problem. Hiring marksmen to remove the deer was rejected because of the cost and loss of recreational opportunity. The technology for effective wildlife birth control does not exist.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Reduction in deer numbers will allow ecological conditions to recover and the health of the deer herd to improve.

(b) State whether a detrimental effect on environmental and public health would result if not implemented: Yes

(c) If detrimental effect would result, explain detrimental effect: Not removing deer from these state parks will result in serious damage to the plant communities in the park, and ultimately a mass die-off of deer from starvation and disease, with deer diseases possibly spreading to deer outside the park.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None identified.

(a) Necessity of proposed regulation if in conflict: Not applicable.

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: Not applicable.

(10) Any additional information or comments:

(11) TIERING: Is tiering applied? (Explain why tiering was or was not used) Tiering is not appropriate because the administrative regulation applies equally to all individuals or entities it regulates.

**DEPARTMENT OF AGRICULTURE  
Division of Animal Health  
(New Administrative Regulation)**

**302 KAR 20:051. Domestic livestock, poultry and fish composting.**

RELATES TO: KRS 257.010

STATUTORY AUTHORITY: KRS 257.160(3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 257.160(3) authorizes the State Board of Agriculture to promulgate administrative regulations to implement KRS 257.160. KRS 257.160(1)(f) allows disposal of animal carcasses by composting in a facility according to the board's administrative regulations and approved in accordance with KRS Chapter 224.

Section 1. Definitions. (1) "Bedding" means straw or similar absorbent material utilized in livestock or poultry housing.

(2) "Bulking agent" means that which is added to compost to decrease its bulk density and promote aeration. Only the following may be used as compost bulking agents in composting structures, unless otherwise approved by the State Veterinarian:

(a) Hay;

(b) Straw;

(c) Unpainted wood chips that do not have additives or preservatives;

(d) Unpainted shredded bark that does not have additives or preservatives;

(e) Sawdust which is unpainted and which does not have additives or preservatives;

(f) Litter cake;

(g) Finished compost;

(h) Rice hulls; and

(i) A mixture of any of the recommended bulking agents listed in paragraphs (a) to (h) of this subsection.

(3) "Compost" means the humus-like product of the process of composting domestic livestock, poultry, or fish, which may be used as a soil conditioner or enhancer.

(4) "Composting" means the biological decomposition of organic matter, which inhibits pathogens.

(5) "Finished" compost means the end product material that has undergone primary and secondary composting.

(6) "Fish" means the bodies and parts of bodies of all animal aquatic life being raised or kept for sale to a wholesaler or retailer, or for direct sale to the public.

(7) "Groundwater" means underground water in the zone of saturation.

(8) "Leachate" means any liquid that may drain from the compost mixture.

(9) "Litter cake" means a wet compact crust of poultry litter that

forms around feeders and waterers.

(10) "Livestock" means cattle, sheep, domestic livestock, goats, horses, or any other animals of the bovine, ovine, porcine, caprine, or equine species.

(11) "Normal natural daily mortality" means domestic livestock, poultry and fish carcasses generated as a result of the ordinary death loss associated with the day-to-day operations of raising and keeping domestic livestock, poultry and fish. Normal natural daily mortality does not include by-products of domestic livestock, poultry and fish processing or slaughter operations such as carcass parts, bones, blood viscera, feathers and other animal byproduct.

(12) "Owner" means any person owning, having day to day operational responsibilities, leasing from another, or having charge of any domestic animal.

(13) "Poultry" means all chickens, ducks turkeys, or other domestic fowl being raised or kept on any premises in the Commonwealth for profit.

(14) "Poultry litter" means poultry manure and used bedding removed from a poultry house.

(15) "Primary composting" means a process which takes a minimum of twenty-one (21) days for fish and poultry; three (3) months for domestic livestock and during which the compost material is aerated and turned at intervals dependent on attaining acceptable temperatures.

(16) "Secondary composting" means a passive process in which decomposition continues for not less than four (4) weeks for poultry; three (3) months for domestic livestock. Fish carcasses do not require a secondary composting period.

Section 2. Permit Required. (1) The state veterinarian will issue a permit for a farm animal composting facilities with a two (2) years renewal.

(2) Permit application shall include name and address of compost owner, location of composting facilities and a description of the facilities and composting procedure.

(3) All animal composting facilities are subject to inspection by the state veterinarian or their representative.

Section 3. Permitted Facilities. (1) Any domestic livestock or poultry not composted shall be disposed of in a manner consistent with KRS 257.160.

(2) Permitted facilities must be constructed to the following standards:

(a) The facility shall be constructed for the purpose intended.

(b) The facility shall be maintained and kept in proper repair at all times.

(2) Permitted facilities shall have all of the following:

(a) Floors must be sloped in a manner, which will contain any leachate from the composting facility.

(b) Properly equipped storage facilities for raw and finished product to prevent access by scavengers or livestock.

(3) The floor space and equipment in a permitted facility shall be kept clean and free of accumulations of filth and debris.

(4) The location of the facility may not be located within a flood plain or within 150-feet of a watercourse, well, spring, or public highway, or 500-feet of a residence, church, school or other public facility other than that of the farm operators.

(5) A roof shall cover the entire composting area to prevent infiltration of precipitation and to prevent runoff.

(6) An impervious, weight-bearing floor of no less than four (4) inches of concrete shall be used.

(8) Surface water shall be diverted away from the composter.

(9) The composter shall consist of primary or primary and secondary treatment facilities.

(10) The size of the composter shall be based on the farm's projected mortality rate,

(11) The composter shall be constructed of permanent rot-resistant wall materials, such as preservative treated wood, concrete, or precast concrete such as highway land dividers. Each composter bin shall be three sides of a rectangle or square. One (1) side of the bin shall be left open for loading, unloading and mixing the compost.

(12) All processing of dead animals shall be done within the permitted facility or by any other method approved by the state veterinarian.

erinarian.

(13) Before dead animals or poultry are composted they shall be stored indoors on floors constructed of concrete or other storage methods approved by the state veterinarian.

(14) The disposition of finished compost may be by direct application to soils, sale, or other transfer of ownership. The final disposition of finished compost shall be application to soils following generally acceptable manure management practices.

(15) Finished compost should be disposed of on the farm of origin. If compost is moved off-farm, then a log of final disposition must be maintained for six (6) months and all existing laws for the transportation of carcasses are in effect.

(16) No hazardous materials can be used in the composting procedure.

(17) Adequate efforts must be taken to prevent odor, insects and pests. All carcasses must be inaccessible to scavengers, livestock or live poultry.

Section 4. Disposal of Poultry by Composting. (1) Persons disposing of poultry by means of composting shall comply with the following requirements or by other composting processes approved by the state veterinarian:

(a) A mixture of one (1) part dead poultry (by weight), one and one-half (1 1/2) part poultry litter, and one-tenth (.1) part of straw shall be used. For example: 400 pounds of dead poultry will require 600 pounds of poultry litter and forty (40) pounds of straw.

(b) Layering shall be done in the following order, starting from the floor:

1. First layer shall be straw, poultry litter, straw, birds and poultry litter.

2. Second and subsequent layers shall be straw, birds and poultry litter.

(c) A thirty-six (36) inch probe type thermometer shall be inserted daily into the pile to check the temperature. Within two (2) to four (4) days, the temperature should reach at least a range of 135 degrees to 150 degrees Fahrenheit.

(d) Once the temperature begins to fall from the peak the material shall be removed to the secondary treatment bin.

(e) In high rise or deep pit poultry facilities for pullet and eggs layers in-house composting is allowed. No new carcasses can be added to in house composting thirty (30) days prior to manure removal.

(f) Carcasses must be reduced to only feathers, hair and bones remaining.

(g) After seven (7) to ten (10) days in the secondary bin, the compost may be agronomically distributed over land under cultivation or reused in the composting process. For the purpose of this subsection, the agronomic rate is the annual application rate of poultry compost, weather alone or in combination with other nutrient supplying materials, that is necessary to achieve a reasonable crop yield without exceeding crop nutrient requirements.

(2) The composted material may be substituted for up to one-half (1/2) of the poultry litter and one-half (1/2) of the straw.

Section 5. Disposal of Fish by Composting. (1) Persons disposing of fish by means of composting shall comply with the following requirements or by other composting processes approved by the state veterinarian:

(a) The base layer shall use six (6) to twelve (12) inch thickness of a bulking agent.

(b) Be no more than six (6) to eight (8) feet wide, but as long as necessary to accommodate the day's supply of compost material.

(2) Composting layer shall consist of a mixture of one (1) part fish; three (3) parts bulking agent and shall be mixed prior to use in the composting layer. The mixing of the materials for the composting layer shall be done in a manner to prevent leakage (e.g., stock tank, bucket, mixing drum).

(3) The cover layer shall consist of two (2) part bulking agent and two (2) parts recycled compost (if available) or two (2) parts bulking agent and should reach a thickness of six (6) to twelve (12) inches.

(4) The order for layering shall be starting from the concrete with the base layer, then the composting layer (fish, bulking agent and recycled compost), and the cover layer. The composting and cover

layers are piled on top of the base layer to form a trapezoid no higher than four (4) feet.

(5) Adding new material to the end of the pile does additions to the compost pile.

(6) A probe-type thermometer shall be inserted daily into the pile to check the temperature. The temperature shall reach a range of 135 degrees to 150 degrees Fahrenheit. The material can be recycled after it has composted for at least two (2) to three (3) weeks, and its temperature has dropped to air temperature.

(7) After the temperature has dropped to air temperature (normally two (2) to three (3) weeks), the composted material may be used in the composting layer, or after one (1) month, the composted material may be agronomically distributed over land under cultivation or reused in the cover layer. For the purpose of this subsection, the agronomic rate is the annual application rate of fish compost, either alone or in a combination with other nutrient supplying materials, that is necessary to achieve a reasonable crop yield without exceeding crop nutrient requirements.

Section 6. Disposal of Domestic Livestock by Composting. (1) Persons disposing of domestic livestock by means of composting shall comply with the following requirements or by the composting processes approved by the state veterinarian:

(a) Sawdust shall be the primary carbon source material. Sawdust from treated wood products shall not be used in any composting processes under any circumstance. Other carbon source materials may be used for no more than fifty (50) percent, by volume, of the total carbon source, with sawdust making up the remaining fraction. When more than one (1) carbon source material is used, sawdust shall be distributed by mixing throughout the secondary carbon source materials. Other carbon source materials could include chopped straw or chopped corncobs.

(b) It is expected that sawdust will be required in the ratio of approximately one (1) cubic foot of sawdust per ten (10) pounds of carcass (three and seven-tenths (3.7) cubic yards of sawdust per 1000 pounds of carcass). A supply of sawdust shall be stockpiled and maintained on the premise at all times when the composter is in operation.

(c) Each compost bin shall have a layer of sawdust a minimum of ten (10) inches deep placed on the floor before the first carcass is placed in the bin. There shall be a minimum of ten (10) inches of sawdust between the carcass and each of the vertical walls of the bin. The carcass shall be covered with a minimum of ten (10) inches of sawdust. Sawdust shall be added to the pile as composting begins, daily or as frequently as needed to sustain a ten (10) inch cover of sawdust over all carcasses in the bin's uppermost layer.

(d) A compost thermometer with a probe at least thirty-six (36) inches long shall be obtained and used daily to measure the temperature of the compost in the middle of each bin. The compost temperature should reach a range of 135 degrees to 150 degrees Fahrenheit and be recorded daily. Compost temperature indicates microbial activity and stage of composting process. The composting process shall be managed in such a way that the heating and decomposition can proceed to completion. If aerobic composting does not begin within seven (7) days, i.e., if temperatures do not rise above 135 degrees to 150 degrees Fahrenheit, the compost pile shall be turned and moisture content of the sawdust adjusted to allow the process to proceed. Temperature record shall be available for examination until the compost is disposed.

(e) Sawdust and carcasses may be placed in the bin until the bin is full.

(f) Animals weighing over 300 pounds must be cut into pieces small enough to ensure complete composting.

(g) The rumens of all ruminant animals must be open prior to composting.

(2) All compost from the primary bin shall be allowed to undergo a second composting phase as follows:

(a) When the temperature surrounding the last carcass placed in the composter drops below a range of 135 degrees to 150 degrees Fahrenheit (typically up to three (3) months after the last carcass addition), the compost in that bin shall be transferred to a second bin and allowed to reheat, through a second composting cycle. Moisture shall be added to the compost as needed to promote further composting activity.



## VOLUME 25, NUMBER 2 – AUGUST 1, 1998

(b) Compost shall remain in the second bin for the duration of the secondary composting cycle (typically three (3) months). Temperature of the compost shall be measured using the compost thermometer to monitor the composting process.

(c) Finished compost shall be agronomically distributed over the land under cultivation or reused in the composting process. Finished compost may be returned to the primary composting bin the ratio of up to fifty (50) percent finished compost to fresh sawdust. For the purpose of this subsection, the agronomic rate is the annual application rate of domestic livestock compost, whether alone or in combination with other nutrient supplying materials, that is necessary to achieve a reasonable crop yield without exceeding crop nutrient requirements.

BILLY RAY SMITH, Commissioner and Chairman  
MARK FARROW, General Counsel

APPROVED BY AGENCY: July 6, 1998

FILED WITH LRC: July 9, 1998 at 1 p.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation will be held on August 25, 1998, at 10 a.m. at the Department of Agriculture 7th Floor Conference Room, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601. Individuals interested in attending this hearing shall notify this agency in writing by August 18, 1998, five (5) days prior to the hearing, of this intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Mark Farrow, General Counsel, Department of Agriculture, Capital Plaza Tower, 7th Floor, 500 Mero Street, Frankfort, Kentucky 40601, (502) 564-4696 – phone, (502) 564-2133 – facsimile.

### REGULATORY IMPACT ANALYSIS

Contact Person: Mark Straw, Director

(1) Type and number of entities affected: This regulation has the potential to effect commercial egg producers who choose to use in-house composting, as well as, the approximately 500 broiler growers. Approximately one-half of the broiler growers use composting as a means of dead animal disposal. In addition, an unknown number of domestic livestock producers and aquaculture producers may be affected by this regulation.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: No public comments received.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: N/A

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: If the facility was built prior to this regulation, they are exempt from the setback requirements. Recordkeeping is minimal and should add little to the cost of doing business. No fee for permit. Some additional construction may be required if facility is accessible to animals such as dogs. Temperature monitoring will add some labor, appreciatively 5-10 minutes per day.

2. Second and subsequent years: Same as above.

3. Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Implementation will create additional paper work and man-hours for the state veterinarian's office. Any additional costs will be paid through the department's budget.

2. Continuing costs or savings: Records, as to certifica-

tion/permit will be required.

3. Additional factors increasing or decreasing costs: N/A

(b) Reporting and paperwork requirements: Same as above.

(4) Assessment of anticipated effect on state and local revenues: N/A

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Existing personnel will be used for implementation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation on:

(a) Geographical area in which administrative regulation will be implemented: No public comments received.

(b) Kentucky: Same as (a).

(c) Assessment of alternative methods; reasons why alternatives were rejected: Alternative methods of dead animal disposal have not been rejected. Those statutory methods are still available.

(7) Assessment of expected benefits:

(8) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: Improper composting and access to composter by scavengers creates the possibility of contamination; additionally, exposure to improperly composted carcasses could pose a health risk to the public.

(a) State whether a detrimental effect on environment and public health would result if not implemented: By implementing this regulation we are bringing consistency to the process. However, many producers are presently composting dead animals without any detrimental effects.

(b) If detrimental effect would result, explain detrimental effect: Improper composting operation poses a health risk.

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: This administrative regulation has been drafted to comply with an order by legislative body when composting was approved as a means of dead animal disposal.

(11) TIERING: Is tiering applied? No. Tiering not applied because regulation applies to all persons utilizing a composting system.

### JUSTICE CABINET Department of Corrections (New Administrative Regulation)

#### 501 KAR 8:011. Repeal of 501 KAR 8:010.

RELATES TO: KRS 196.035, 197.020, 431.240

STATUTORY AUTHORITY: KRS 196.035, 197.020, 431.240

NECESSITY, FUNCTION, AND CONFORMITY: 501 KAR 8:010 is no longer required, as a newly enacted section of KRS Chapter 431 sets forth the procedure for handling a claim that the condemned is mentally incapable of being executed.

Section 1. 501 KAR 8:010, Execution hearings, is hereby repealed.

DOUG SAPP, Commissioner  
TAMELA BIGGS, Staff Attorney

APPROVED BY AGENCY: July 10, 1998

FILED WITH LRC: July 14, 1998 at 2 p.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on August 21, 1998, at 9 a.m., in the State Office Building Auditorium. Individuals interested in being heard at this hearing shall notify this agency in writing by August 14, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. The hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a tran-

script is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing, or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Jack T. Damron or Tamela Biggs, Staff Attorneys, Department of Corrections, 2nd Floor, State Office Building, Frankfort, Kentucky 40601, Telephone Number 502-564-2024, Facsimile Number 502-564-6494.

#### REGULATORY IMPACT ANALYSIS

Contact Person: Tamela Biggs, Staff Attorney

(1) Type and number of entities affected: 325 employees of the correctional institutions, 29 death row inmates, 0 parolees and probationers.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: None

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: None

2. Second and subsequent years: None

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: None

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Policy revisions.

(4) Assessment of anticipated effect on state and local revenues: None

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: Funds budgeted for this 1998 - 2000 biennium.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: None

(b) Kentucky: None

(7) Assessment of alternative methods; reasons why alternatives were rejected: None

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: None

(c) If detrimental effect would result, explain detrimental effect: N/A

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict: N/A

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions: N/A

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? No. Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all those individuals or entities regulated by it. Disparate treatment of any person or entity subject to this administrative regulation could raise questions of arbitrary action on the part of the agency. The "equal protection" and "due process" clauses of the Fourteenth Amendment of the U.S. Constitution may be implicated as well as Sections 2 and 3 of the Kentucky Constitution.

#### PUBLIC PROTECTION AND REGULATION CABINET Department of Insurance (New Administrative Regulation)

#### 806 KAR 3:131. Repeal of 806 KAR 3:130.

RELATES TO: 1998 RS HB 496 Sec. 35, 1998 RS SB 353

STATUTORY AUTHORITY: 1998 RS HB 496 Sec. 35, 1998 RS SB 353

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.3-245 authorized the Commissioner of Insurance to promulgate administrative regulations setting out the manner and form in which closed claim information from insurers should be reported. The department promulgated 806 KAR 3:130 to effectuate liability insurance closed claim reporting. The 1998 Kentucky General Assembly enacted 1998 RS SB 353 and 1998 RS HB 496 Sec. 35, thereby repealing KRS 304.3-245. Therefore, the administrative regulation requiring insurers to report closed claim information is no longer necessary and must be repealed.

Section 1. 806 KAR 3:130, Liability insurance closed claim reporting, is hereby repealed.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

GALE PEARCE, General Counsel

APPROVED BY AGENCY: June 19, 1998

FILED WITH LRC: June 30, 1998 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative regulation shall be held on August 21, 1998, at 10 a.m. (ET) at the offices of the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 14, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Sharron S. Burton, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602. PH: (502) 564-6032 Ext. 249, FAX: (502) 564-1456.

#### REGULATORY IMPACT ANALYSIS

Contact person: Sharron S. Burton

(1) Type and number of entities affected: This administrative regulation affects approximately 758 insurers that are authorized to transact casualty insurance in Kentucky.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: This administrative regulation will eliminate the requirement that insurers authorized to transact casualty insurance in Kentucky report closed claim information to the Commissioner of Insurance.

2. Second and subsequent years: This administrative regulation will eliminate closed claim reporting for the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Department personnel will no longer be required to collect and review closed claim data from insurers.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The department will no longer be required to compile closed claim data and prepare an annual written report on the composite information.

(4) Assessment of anticipated effect on state and local revenues: The department does not anticipate that there will be any effect on state and local revenues caused by the implementation of this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: There will be no implementation or enforcement measures required as a result of this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: The department has received no public comments regarding this issue.

(b) Kentucky: The department has received no public comments regarding this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The reporting requirements of 806 KAR 3:130 are no longer required since the repeal of KRS 304.3-245. Therefore, 806 KAR 3:130 must be repealed. No other alternatives were considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: The department does not anticipate any effect on environment and public health if this administrative regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applied since this administrative regulation applies to all insurers authorized to transact casualty insurance in Kentucky.

**PUBLIC PROTECTION AND REGULATION CABINET**  
**Department of Insurance**  
**(New Administrative Regulation)**

**806 KAR 9:241. Repeal of 806 KAR 9:240.**

RELATES TO: 1998 RS HB 429

STATUTORY AUTHORITY: 1998 RS HB 429

NECESSITY, FUNCTION, AND CONFORMITY: 806 KAR 9:240 confirmed the applicability of licensure statutes and insurance consumer protections to financial institutions. The licensure requirements for financial institutions were addressed by the 1998 General Assembly in 1998 RS HB 429 thereby eliminating the need for 806 KAR 9:240. Therefore, in order to avoid duplicative or conflicting licensing requirements for financial institutions, it is necessary to repeal 806 KAR 9:240.

Section 1. 806 KAR 9:240, Financial institutions licensed as noncredit-related insurance agents, is hereby repealed.

GEORGE NICHOLS III, Commissioner

LAURA M. DOUGLAS, Secretary

GALE PEARCE, General Counsel

APPROVED BY AGENCY: July 12, 1998

FILED WITH LRC: July 13, 1998 at 4 p.m.

**PUBLIC HEARING:** A public hearing on this administrative regulation shall be held on August 21, 1998, at 10 a.m. (ET) at the offices of the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 14, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

**CONTACT PERSON:** Sharron S. Burton, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, PH: (502) 564-6032 Ext. 249, FAX: (502) 564-1456.

**REGULATORY IMPACT ANALYSIS**

Contact person: Sharron S. Burton

(1) Type and number of entities affected: This administrative regulation affects the approximately 200 financial institutions authorized by law to engage in insurance agency activities in the state of Kentucky. This administrative regulation will also affect all financial institutions that, in the future, desire to be licensed as an insurance agent in the state of Kentucky.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: 806 KAR 9:240 required financial institutions engaged in the sale of insurance to comply with licensing and disclosure requirements. Since these licensing and disclosure requirements were incorporated into 1998 RS HB 429, the compliance and paperwork requirements for financial institutions will not be eliminated by the repeal of 806 KAR 9:240.

2. Second and subsequent years: Financial institutions engaged in insurance agency activities will be required to comply with licensing and disclosure requirements for the second and subsequent years in accordance with 1998 RS HB 429.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: Pursuant to 806 KAR 9:240, the department currently processes applications for the licensure of financial institutions to engage in insurance agency activities in the state of Kentucky. Since these licensing requirements were incorporated into 1998 RS HB 429, the department will continue to process licensing applications for financial institutions. The repeal of 806 KAR 9:240 will not eliminate the department's responsibilities regarding the licensure of financial institutions.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: Pursuant to 1998 RS HB 429, the Department of Insurance will continue to process applications for licensure submitted by financial institutions wishing to engage in insurance agency activities in the state of Kentucky.

(4) Assessment of anticipated effect on state and local revenues: The department does not anticipate that there will be any effect on state and local revenues caused by the implementation of this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: The department does not

anticipate that any source of revenue will be required for the implementation or enforcement of this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: The department has received no public comments regarding this issue.

(b) Kentucky: The department has received no public comments regarding this issue.

(7) Assessment of alternative methods; reasons why alternatives were rejected: The licensure and disclosure requirements for financial institutions engaged in insurance agency activities in the state of Kentucky were incorporated into 1998 RS HB 429. For this reason, 806 KAR 9:240 is no longer required and should be repealed. No other alternatives were considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: The department does not anticipate any effect on environment and public health if this administrative regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: The provisions of 806 KAR 9:240 are duplicative of those contained in 1998 RS HB 429.

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applied since this administrative regulation applies to all financial institutions that desire to engage in insurance agency activities in the state of Kentucky.

**PUBLIC PROTECTION AND REGULATION CABINET  
Department of Insurance  
(New Administrative Regulation)**

**806 KAR 39:081. Repeal of 806 KAR 39:080.**

RELATES TO: KRS 304.39-350, 1998 RS HB 496 sec. 35

STATUTORY AUTHORITY: KRS 304.2-110(1), 1996 RS HB 496 sec. 35

NECESSITY, FUNCTION, AND CONFORMITY: KRS 304.2-110(1) provides that the Commissioner of Insurance may make reasonable rules and administrative regulations necessary for or as an aid to the effectuation of any provision of the insurance code. KRS 304.39-350 required the commissioner to report to the Legislative Research Commission the total amount of payments made by insurers of motor vehicles for personal injuries incurred by their covered motorists as a result of an accident using a motor vehicle. The Department of Insurance promulgated 806 KAR 39:080 to require insurers to report the information necessary for the commissioner to carry out his reporting duty in accordance with KRS 304.39-350. The last report from the insurers was due on August 15, 1996. Also, 1996 RS HB 496 sec. 35 repealed the commissioner's reporting requirement in KRS 304.39-350. Since the commissioner and the insurers of motor vehicles are no longer required to report personal injury information, it is necessary to repeal 806 KAR 39:080.

Section 1. 806 KAR 39:080, Reporting requirements for insurers of motor vehicles regarding payment of personal injury benefits, is hereby repealed.

GEORGE NICHOLS III, Commissioner  
LAURA M. DOUGLAS, Secretary  
GALE PEARCE, General Counsel

APPROVED BY AGENCY: June 19, 1998

FILED WITH LRC: June 30, 1998 at 4 p.m.

PUBLIC HEARING: A public hearing on this administrative

regulation shall be held on August 21, 1998, at 10 a.m. (ET) at the offices of the Kentucky Department of Insurance, 215 West Main Street, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by August 14, 1998, five days prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Sharron S. Burton, Counsel, Kentucky Department of Insurance, 215 West Main Street, P.O. Box 517, Frankfort, Kentucky 40602, PH: (502) 564-6032 Ext. 249, FAX: (502) 564-1456.

**REGULATORY IMPACT ANALYSIS**

Contact person: Sharron S. Burton

(1) Type and number of entities affected: This administrative regulation affects the approximately 728 insurers of motor vehicles.

(2) Direct and indirect costs or savings on the:

(a) Cost of living and employment in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

(b) Cost of doing business in the geographical area in which the administrative regulation will be implemented, to the extent available from the public comments received: The department has received no public comments regarding this issue.

(c) Compliance, reporting, and paperwork requirements, including factors increasing or decreasing costs (note any effects upon competition) for the:

1. First year following implementation: This administrative regulation will eliminate the requirement that insurers of motor vehicles report the amount of payments made for personal injuries incurred by the insurers' covered Kentucky motorists as a result of an accident using a motor vehicle.

2. Second and subsequent years: This administrative regulation will eliminate the reporting required for the second and subsequent years.

(3) Effects on the promulgating administrative body:

(a) Direct and indirect costs or savings:

1. First year: The department will no longer be required to collect and report on data from insurers regarding the amount of payments made for personal injuries as a result of an accident using a motor vehicle.

2. Continuing costs or savings: None

3. Additional factors increasing or decreasing costs: None

(b) Reporting and paperwork requirements: The department is no longer required to report to the Legislative Research Commission regarding the amount of payments made by insurers for personal injuries as a result of an accident using a motor vehicle.

(4) Assessment of anticipated effect on state and local revenues: The department does not anticipate that there will be any effect on state and local revenues caused by the implementation of this administrative regulation.

(5) Source of revenue to be used for implementation and enforcement of administrative regulation: There will be no implementation or enforcement measures required as a result of this administrative regulation.

(6) To the extent available from the public comments received, the economic impact, including effects of economic activities arising from administrative regulation, on:

(a) Geographical area in which administrative regulation will be implemented: The department has received no public comments regarding this issue.

(b) Kentucky: The department has received no public comments regarding this issue.

(7) Assessment of alternative methods; reasons why alterna-

tives were rejected: The reporting requirements of 806 KAR 39:080 were only necessary through August 15, 1996. Furthermore, the statute upon which this administrative regulation was based was repealed by 1998 RS HB 496 sec. 35. For these reasons, 806 KAR 39:080 should be repealed. No other alternatives were considered.

(8) Assessment of expected benefits:

(a) Identify effects on public health and environmental welfare of the geographical area in which implemented and on Kentucky: None

(b) State whether a detrimental effect on environment and public health would result if not implemented: The department does not anticipate any effect on environment and public health if this administrative regulation were not implemented.

(c) If detrimental effect would result, explain detrimental effect:

(9) Identify any statute, administrative regulation or government policy which may be in conflict, overlapping, or duplication: None

(a) Necessity of proposed regulation if in conflict:

(b) If in conflict, was effort made to harmonize the proposed administrative regulation with conflicting provisions:

(10) Any additional information or comments: None

(11) TIERING: Is tiering applied? Tiering is not applied since this administrative regulation applies to all insurers of motor vehicles that insure Kentucky motorists.

**ADMINISTRATIVE REGULATION REVIEW SUBCOMMITTEE**  
**Minutes of July 14, 1998**

The July meeting of the Administrative Regulation Review Subcommittee was held on Tuesday, July 14, 1998 at 10 a.m. in Room 149 of the Capitol Annex. Representative John Arnold, Chairman, called the meeting to order, and the roll call was taken. The minutes of the June 9, 1998 meeting were approved.

**Present were:**

**Members:** John Arnold, Chairman Senators Joey Pendleton; Dick Roeding; Representatives James Bruce, Jimmy Lee, and Woody Allen.

**LRC Staff:** Greg Karambellas, Stephen Lynn, Donna Little, Susan Wunderlich, Angela Phillips, Donna Valencia, Biff Baker.

**Guests:** Sam Blackburn, Kentucky Real Estate Appraisers Board; Jeff Flair, Real Estate Commission; Michael Denney, Bob Beisecker, Kentucky Lottery Corporation; Tom Bennett, John Wilson, Roy A. Grimes, Department of Fish and Wildlife Resources; Allen Kyle, James West, Jack R. Custer, John McCauley, Mark Farrow, Department of Agriculture; Mark Mangeot, Roy Massey, Lester O. Carrithers, Stephen A. Coleman, Bob Ware, Natural Resources and Environmental Protection; Jim Nelson, Libraries and Archives; Victor L. Gausepohl, Courtney L. Carter, Workforce Development Cabinet; Rena Strevels, Kentucky Racing Commission; Vicki D. Jeffs, Ralph Von Derau, Michael Littlefield, Marcia Morganti, Eric Friedlander, Cookie Whitehouse, Douglas Riddell, Cabinets for Health Services and Families and Children; Kathi Marshall; Ted Bradshaw, IIAK; Marie Alagia Cull; Laurie Berry, Kentucky Association of Chiropractors; Daniel B. Howard, Kentucky Association of Regional MH-MR Board; David Maloney, Union County Conservation District; Gay Dwyer, Kentucky Retail Federation; Jim Carlross, Kentucky Association of Realtors; Ronny Pryor, Kentucky Farm Bureau; Bob Barnett, Kentucky Pharmacists Association; William L. Quisenberry, Ag-Gro Fertilizer Company; Monty Parrish, Kentucky Fertilizer and Agricultural Chemical Association; John Brazel, Kentucky Chamber of Commerce.

**The Subcommittee determined that the following administrative regulations, as amended by the promulgating agency and the Subcommittee, complied with statutory requirements:**

**Real Estate Commission**

201 KAR 11:011. Definitions for 201 KAR Chapter 11. Jeff Blair, General Counsel, and Joseph Helm, Executive Director, represented the Commission.

In response to questions by Senator Roeding, Mr. Blair stated that: (1) the definition of solicit: (a) related to an existing administrative regulation that established prohibited activities for non-licensed assistants who worked in a real estate company; (b) was derived from the provisions governing brokerage established in KRS Chapter 324; and (c) prohibited a non-licensed person from contacting a consumer about his interest in selling property as it related to brokerage activities; and (2) an owner was authorized to sell his own property without violating this prohibition, because brokerage required activity on behalf of another person.

Subcommittee staff stated that the suggested amendment: (1) clarified the language regarding solicitation; and (2) addressed the issue raised in the initial staff review.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); and (3) Section 1 was amended to: (a) comply with the: 1. format requirements of KRS 13A.220(4); and 2. drafting requirements of KRS 13A.222(4); and (b) define "false, misleading, or deceptive advertising", as required by KRS 324.117(1), rather than "false", "misleading", and "deceptive".

201 KAR 11:170. Private school approval. This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to

clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Section 1 was amended to clarify the requirements for application for certification as an approved real estate school or to renew certification; (4) Section 6 was amended to delete duplicate provisions from Section 1; (5) Sections 1, 2, 3, 4, 5, and 7 were amended to comply with the: (a) format requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4); and (6) a new Section 8 was created to incorporate by reference the required materials, as required by KRS 13A.2251.

201 KAR 11:190. Rules of practice and procedure before the Kentucky Real Estate Commission. This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 1 through 9 were amended to: (a) delete language that repeated, summarized, or modified statutory provisions, as required by KRS 13A.120(2)(e), (f), and (i); (b) comply with the: 1. format requirements of KRS 13A.220(4); and 2. drafting requirements of KRS 13A.222(4); and (c) clearly establish the requirements for filing a complaint or answer; and (3) a new Section 5 was created to incorporate by reference the required forms, as required by KRS 13A.2251.

201 KAR 11:230. Mandatory continuing education. In response to a question by Senator Roeding, Mr. Blair stated that the number of continuing education hours required for a real estate licensee was: (1) not changed by the amendment to this administrative regulation; and (2) established by KRS 324.281(7).

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Section 1 was amended to: (a) delete language that repeated or summarized statutory provisions, as required by KRS 13A.120(2)(e) and (f); (b) clearly establish the continuing education requirements relating to a licensee or sponsor; (c) delete the proposed language referencing a Commission approved non-profit real estate related organization; and (d) comply with the: 1. format requirements of KRS 13A.220(4); and 2. drafting requirements of KRS 13A.222(4); and (4) a new Section 2 was created to incorporate by reference the required material, as required by KRS 13A.2251.

**Kentucky Lottery Corporation**

202 KAR 3:010. Code of ethics. Michael Denney, Attorney; and Bob Beisecker, Director of Human Resources, represented the Corporation.

This administrative regulation was amended as follows: (1) the RELATES TO paragraph was amended to correct statutory citations; (2) Section 1 was amended to: (a) clearly establish the requirement that an officer or employee of the Kentucky Lottery Corporation comply with the requirements established in the Code of Ethics; (b) comply with the drafting requirements of KRS 13A.222(4) and KRS 13A.2251; and (c) correct the edition date of the material incorporated by reference; and (3) the material incorporated by reference was amended to: (a) create a new Section IH to establish requirements for a waiver; (b) add to Section IC.1.b.(i)(B) to establish requirements governing when an employee or related party may enter a contest or drawing for a prize; and (c) delete the requirements established in Section III that governed the use of computer equipment.

**Tourism Development Cabinet: Department of Fish and Wildlife Resources: Game**

301 KAR 2:041. Shooting preserves and foxhound training enclosures. Tom Bennett, Commissioner, Roy Grimes, Wildlife Direc-



tor, and John Wilson represented the Department.

In response to a question by Chairman Arnold, Subcommittee staff stated that: (1) while the Regulations Compiler was authorized to correct mis-spelled words, a suggested amendment will always include an amendment to correct a mis-spelling of a word; and (2) the suggested amendment relating to "obtaining" was included to ensure that the error was caught.

In response to questions by Representative Allen, Mr. Bennett stated that: (1) this administrative regulation: (a) currently: 1. permitted licensed individuals to raise quail for release into the wild; and 2. required the quail to be banded to provide the Department with information on the survivability of the banded quail; (b) was amended to: 1. remove the banding requirement; and 2. permit the free release of quail into the wild; and (c) did not include an amendment to the fox hunting enclosure provisions established in this administrative regulation; and (2) because research conducted throughout the South has shown that most of the quail do not survive very long in the wild, the Department stopped raising quail several years ago.

This administrative regulation was amended as follows: Section 3(1) was amended to correct the spelling of "obtaining".

301 KAR 2:172. Deer hunting seasons and requirements. In response to questions by Senator Roeding, Mr. Bennett stated that: (1) this administrative regulation: (a) authorized a landowner, who was not a full-time farmer, to obtain a free permit from one of the 1,100 hunting license agents in Kentucky; and (b) required a landowner, when he shot a deer on his property, to: 1. tag the deer; and 2. make a toll-free telephone call to the Department to report the taking; (2) while the Department had tried to increase the deer kill, many counties had a problem with deprivation by deer; (3) the Department: (a) wanted to increase the deer kill in 51 counties, in response to concerns raised by farmers; and (b) had created new opportunities for deer kill, by authorizing the use of bonus tags; and (4) the bonus tag program was created to make the deer models and projections more accurate which would enable the Department to be sensitive to the needs of landowners.

In response to questions by Representative Allen, Mr. Bennett stated that: (1) while this administrative regulation did not currently require a landowner to call the Department if he killed a deer on his land, a voluntary toll-free telephone number established by the Department last year had received modest success with landowners reporting killed deer; (2) while the Department believed most people were honest and would report the killed deer, the amendment to this administrative regulation: (a) allowed the Department to be more aggressive in helping landowners; (b) would produce more accurate deer numbers; and (c) would assist the Department in keeping the deer herd at a balance between the: 1. landowners; and 2. 200,000 deer hunters in Kentucky; (3) currently, a law enforcement official had a difficult time determining if a deer transported from a farm for processing had been taken legally; and (4) the Department believed that: (a) the inconvenience to landowners in obtaining the tag would be minimal because: 1. there were 1,100 vendors in Kentucky; and 2. a landowner already was required to go to a vendor to purchase shotgun shells, equipment, and supplies; and (b) as much as fifteen to eighteen percent of the deer harvest each year was affected by landowners who hunted on their property.

Representative Allen stated that: (1) while he understood the Department's intentions, as a landowner and farmer, he believed that the Department would not have any game to hunt if it did not provide assistance and a place for hunters to hunt; (2) he was afraid that a charge for the bonus deer tags would be established at a later date; (3) he felt that a farmer who fed one-third of his crops to the deer should not be charged a fee for a license to kill the deer on his own property; and (4) while he did not hunt, he would be required to get a permit to kill an animal on his own land.

Mr. Grimes stated that a previous requirement was deleted because: (1) it required landowners to bring a deer killed on their property to a check point to check-in the deer; and (2) the requirement was inconvenient.

Mr. Bennett stated that the Department was prohibited from charging a fee to a landowner to hunt on his own property because: (1) KRS 150.170 allowed a resident landowner to hunt and fish on his property without charge; and (2) legislative action was necessary to amend KRS 150.170.

Mr. Grimes stated that the Department: (1) had a difficult time in its deer management program in knowing how many: (a) landowners hunted; and (b) deer each killed; and (2) in order to produce an accurate model, needed to know how many landowners: (a) hunted deer on their land; and (b) were: 1. successful in hunting deer; and 2. not successful hunting deer.

In response to a question by Representative Allen, Mr. Grimes stated that: (1) knowing if a landowner was unsuccessful in hunting deer was important because this information indicated the success rates for hunters in various counties; and (2) the Department would: (a) not know that an unsuccessful landowner-hunter existed, if the hunter did not obtain a free permit; or (b) know that a landowner-hunter existed if he killed a deer.

In response to questions by Chairman Arnold, Mr. Bennett stated that: (1) the Department had been very sensitive for several years to complaints from landowners and farmers about the high number of deer in counties surrounding some of the major crop counties in the urban areas; (2) this administrative regulation: (a) authorized an archer, who had the longest deer hunting season, to pick up an extra permit to kill another deer; and (b) created a bonus permit for any season in the Zone 1 high deer population counties; and (3) in return for the bonus permits, the Department wanted accurate data so it could continue to be aggressive in keeping the deer numbers at a balanced level.

In response to a question by Representative Bruce, Mr. Bennett stated that: (1) under this current administrative regulation, during the non-hunting seasons, if a deer was destroying crops, the landowner: (a) did not have to obtain a free permit; and (b) was required to notify the Department if he killed the deer; (2) state law required a landowner to notify the Department if he killed a deer on his property during a non-hunting period; and (3) archery deer season lasted a total of 4 months.

Representative Allen: (1) stated that he was not satisfied with this administrative regulation, because the government was intruding into private property rights; and (2) moved that this administrative regulation be found deficient.

The Subcommittee did not approve Representative Allen's motion to find this administrative regulation deficient on a roll call vote, with Representative Allen voting in support of his motion.

This administrative regulation was amended as follows: Sections 9, 10, 14, and 16 were amended to comply with the drafting requirements of KRS 13A.222(4).

301 KAR 2:176. Deer control tags. This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to correct statutory citations; (2) Section 6(2)(a)2. was amended to comply with the formatting requirements of KRS 13A.220(4); and (3) Section 8(1) was amended to comply with the drafting requirements of KRS 13A.222(4).

301 KAR 2:178. Deer hunting on wildlife management areas. In response to a question by Senator Roeding, Mr. Bennett stated that the Department intended to create another toll-free telephone number to permit hunters to register by telephone for the quota hunt drawings that were conducted by computer.

This administrative regulation was amended as follows: Sections 1, 2, and 4 were amended to comply with the drafting requirements of KRS 13A.222(4).

**301 KAR 2:230. Shoot-to-retrieve field trial permits and procedures.** In response to questions by Senator Roeding, Mr. Bennett stated that: (1) the term "shoot-to-retrieve" referred to the practice of organizations that conducted bird dog field trials in which: (a) quail were released into the wild; and (b) dogs were judged on their abilities to retrieve the birds; and (2) this administrative regulation related to 301 KAR 2:041.

**This administrative regulation was amended as follows: Section 3(1) was amended to comply with the formatting requirements of KRS 13A.220(4).**

#### **Hunting and Fishing**

301 KAR 3:030. Year-round season for some birds and animals. In response to questions by Representative Allen, Mr. Bennett stated that: (1) coyotes were a statewide problem because the: (a) coyotes killed deer fawns, songbirds, quail, grouse, rabbits, and groundhogs; and (b) Department had not found any research to indicate a way to drastically reduce the coyote population; and (2)

the Department believed that: (a) the coyotes came into Kentucky when the rivers froze in the mid-1970s; and (b) Kentucky would be stuck with the coyote problem until the Department found a method to get rid of them.

Mr. Grimes stated that: (1) the Department had a year round season for coyotes; and (2) the federal government had: (a) spent millions of dollars in attempts to control coyotes; and (b) been unsuccessful in its attempts.

In response to questions by Representative Allen, Mr. Grimes stated that: (1) because the Department was concerned about other wildlife violations, a person: (a) could use a voice call to hunt coyotes; and (2) could not use lights at night to hunt the coyotes; and (2) the Department would write a permit on a case-by-case basis for a landowner who wanted to hunt coyotes by night.

Representative Allen stated that: (1) while he was interested in doing something with coyotes, he understood the Department's concern in preventing deer hunting at night; and (2) if farmers could get calling devices and set up lights at night, both the Department and the farmers would benefit.

In response to a question by Representative Bruce, Mr. Bennett stated that: (1) because the coyote bred according to the carrying capacity of the land, a coyote would: (a) typically have a litter of six pups if that was the amount the land would support; and (b) have a larger litter, if the number of coyotes had been reduced; (2) the coyote: (a) injured the fox; and (b) was a resilient animal; and (3) this administrative regulation permitted the taking of wild hogs.

In response to questions by Representative Allen, Mr. Bennett stated that: (1) wild hogs: (a) lived in south central Kentucky in Big South Fork; and (b) came into Kentucky from Tennessee; (2) the Department believed that some people brought the wild hogs to Kentucky to release and hunt with their dogs illegally; (3) the red wolf would: (a) displace the coyote if they were in the same area; and (b) not control the coyote; (4) the coyote would cause the red wolf to become extinct, because the coyote would interbreed with the red wolf; (5) the red wolf population was low in some areas; and (6) Kentucky had no red wolves.

This administrative regulation was amended as follows: (1) the NECESSITY, FUNCTION, AND CONFORMITY paragraph and Section 2(1)(b) were amended to comply with the drafting requirements of KRS 13A.222(4); and (2) Section 3 was amended to comply with the: (a) formatting requirements of KRS 13A.220(4); and (b) drafting requirements of KRS 13A.222(4).

#### Department of Agriculture: Pesticides

302 KAR 31:040. Storage and handling of pesticides and bulk fertilizer. Mark Farrow, General Counsel, and Allen Kyle represented the Department. Monte Parrish, president of the Kentucky Fertilizer and AgChem Association and owner of Parrish Shop and Sales, appeared to speak in favor of this administrative regulation.

Mr. Farrow stated that: (1) this administrative regulation: (a) related to the storage and handling of pesticides and bulk fertilizer; (b) required containment as set forth by statute; (c) had been worked on for about 4 years since 1994; (d) was promulgated at the request of industry, with the industry and the Department working closely together in its development; and (e) was modeled after the requirements in other states, including Indiana and Illinois; (2) the Department looked at this as an environmental issue to protect the: (a) environment; and (b) agriculture chemical dealers from potential liability; (3) the potential liability for a spill of chemicals would be tremendous for a dealer; and (4) this administrative regulation provided the dealers with a set of standards by which to perform containment work.

In response to a question by Representative Lee, Mr. Farrow stated that: (1) he was familiar with a letter written by William L. Quisenberry, who: (a) was a Winchester fertilizer dealer; (b) opposed parts of the administrative regulation; and (c) was concerned about Section 7 of this administrative regulation which addressed operational area containment; (2) while the Department had not been able to resolve Mr. Quisenberry's concerns, the Department: (a) had adequately addressed his concerns; and (b) believed that Section 10(3) of this administrative regulation adequately addressed how a facility should deal with rain water collected in an unroofed operational containment, because this Section: 1. permitted uncontaminated precipitation to be discharged; and 2. required field appli-

cation to contaminated precipitation; and (3)(a) acknowledged Mr. Quisenberry's presence at the meeting; and (b) suggested that he might want to speak on the issue.

In response to a question by Senator Roeding, Mr. Parrish stated that: (1) ideally, the amount of cost that could be passed on to the consumer, if any, would be determined by the market in a given area and whether competitors would allow the cost to be built into the price of the products; (2) in his particular situation: (a) he had built a plant about 4 years ago that exceeded the requirements established in this administrative regulation; and (b) his competition had not allowed him to recover his cost at the rate that he would have liked; and (3) while potentially a dealer would try to recover the costs of complying with this administrative regulation, the market did not allow dealers to recover the costs all of the time.

This administrative regulation was amended as follows: (1) the RELATES TO and STATUTORY AUTHORITY paragraphs were amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Sections 1(9) and 1(23) were amended to comply with statutory definitions, as required by KRS 13A.120(2)(i); (4) Sections 1(19) and 3 were amended to refer to the "effective date" of this administrative regulation, pursuant to KRS 13A.330; (5) Sections 1, 2, 3, 5, 6, 7, 8, 9, 10, 11, 12 were amended to comply with the drafting requirements of KRS 13A.222(4); and (6) Sections 1, 2, 3, 5, 6, 7, and 11 were amended to comply with the formatting requirements of KRS 13A.220(4).

#### Cabinet for Health Services: Department for Public Health: Office of Inspector General: Health Services and Facilities

902 KAR 20:026. Operations and services; skilled nursing facilities. In response to questions by Chairman Arnold, Mr. von Derau stated that: (1) 902 KAR 20:026, 902 KAR 20:048, and 902 KAR 20:051 were similarly amended concerning the: (a) medication prescriptive authority of advance registered nurse practitioners and therapeutically-certified optometrists; (b) transfer or discharge of residents; and (c) requirements governing the use of restraints or protective devices; (2) 902 KAR 20:180 established new requirements governing the use of locking restraints in psychiatric hospitals; (3) the current philosophy was to conduct an individualized assessment on each patient's needs for a restraint which would include, based on the patient's condition: (a) the type of restraints to be used; (b) the duration of the restraints; and (c) how often the restraint should be checked; and (4) the facility made the individualized assessment, and included input from the patient's family.

In response to a question by Representative Bruce, Mr. von Derau stated that: (1) the situation brought up by Representative Bruce, in which a nursing home refused to follow a doctor's recommendation to restrain a patient to keep her from falling out of bed, may have been based on a misunderstanding of the requirements; (2) if the patient's physician stated that the restraint was necessary, there should be an assessment of the patient's needs to determine the basis of the doctor's recommendation; and (3) he would look into this situation once Representative Bruce gave him more information.

In response to a question by Chairman Arnold, Mr. von Derau stated that: (1) there were different kinds of restraint, including chemical restraints; (2) because his job involved drafting the administrative regulations, he was not familiar with the different types of restraints; and (3) the surveyors: (a) investigated the use of restraints; and (b) worked out of four regional offices in Kentucky, which: 1. were located in: a. Lexington; b. Hopkinsville; c. London; and d. Louisville; and 2. employed about 50 surveyors per regional office.

Representative Lee stated that: (1) federal Medicare regulations: (a) prohibited tying a patient in a wheelchair, or using other physical restraints if: 1. federal money, including Medicare or Medicaid, was involved; and 2. the patient was not in the psychiatric setting of a hospital or nursing home; and (b) permitted the use of a plastic tray similar to an infant's high chair tray; (2) because the new Medicare requirements did not permit the use of side rails on a bed, nursing homes placed crash pads around the bed to cushion a patient's fall from bed; (3) the reasoning behind the prohibitions was to stop the practice of tying a resident of a nursing home in bed to prevent the patient from becoming a nuisance by: (a) getting up at night; or (b)

falling from the wheelchair during the day; (4) he thought the new requirements went too far in some instances, because: (a) the side rails could not be used on a bed; and (b) crash pads around a bed were necessary to limit the injuries suffered by a resident falling out of bed; (5) it was misleading to say that a doctor's order to tie a patient in a wheelchair would be followed, because if federal money is involved, the restraint was prohibited; and (6) discussions were taking place to determine how to keep a patient in bed at night without the use of restraints or bed rails.

In response to Representative Lee's comments, Mr. von Derau stated that: (1) the philosophy was to not use restraints; and (2) because the same surveyor conducted a survey for federal and state requirements simultaneously, the state licensure requirements were promulgated with provisions similar to the federal requirements.

In response to a question by Representative Allen, Representative Lee stated that he did not know the cost of crash pads.

Mr. Friedlander stated that: (1) the OBRA changes for nursing facilities: (a) prohibited the use of locking restraints that a patient was not able to release; (b) permitted the use of restraints, if: 1. the restraint, including a harness or seat belt that fastened with Velcro, could be released by the patient; and 2. the patient was released from the restraint every two hours; (c) were intended to correct the abuses that occurred when a patient was tied to a chair, or given a chemical restraint; and (d) required that a patient with a chemical restraint be given a period of time in which a chemical restraint was not used; and (2) he believed that: (a) modifications could be made to a bed to keep a patient in the bed; and (b) side rails could be used on a bed if the patient could release the rails.

Representative Lee stated that: (1) a patient's ability to release the side rails would create a problem for a patient who released the rails and fell to the floor; (2) a Velcro harness posed a problem because a patient could undo the Velcro and fall to the floor; and (3) he knew that: (a) passive restraints were permissible; and (b) a restraint that the patient could not release was not authorized, unless the doctor placed the patient in a psychiatric setting.

Mr. Friedlander stated that: (1) while Representative Lee's statements were basically correct, there were some exceptions if the safety of the patient was: (a) absolutely in question; and (b) documented; and (2) a facility was required to use monitors and other devices to watch the patients.

Chairman Arnold stated that he wanted the Department to present information at the August, 1998, Subcommittee meeting that included: (1) examples of restraints; (2) the kinds of restraints; (3) the relevant administrative regulations; (4) a demonstration of how the restraints worked, if possible; and (5) the prohibited restraints.

Mr. von Derau and Mr. Friedlander agreed to furnish the information requested by Chairman Arnold.

In response to questions by Senator Roeding, Mr. von Derau stated that: (1) because 902 KAR 20:026, 902 KAR 20:048, 902 KAR 20:051, and 902 KAR 20:180 were in the regulatory process prior to the passage of 1998 Senate Bill 28, these administrative regulations did not include physician assistants among the list of personnel authorized to issue prescriptions; (2) after these administrative regulations became effective, the Department would amend them to authorize clinically-authorized personnel acting within the scope of their authority to issue prescriptions, rather than listing each class of persons authorized to issue prescriptions; and (3) the Department would agree with Senator Roeding's request to amend these administrative regulations to include physician assistants among the list of persons authorized to issue prescriptions.

In response to questions by Senator Roeding, Mr. von Derau stated that this administrative regulation: (1) was amended regarding the use of restraints to: (a) delete language that specifically required notification of the patient's physician if a patient became disturbed or unmanageable; and (b) reference the governing statute, KRS 216.515(6), which required the physician to monitor the patient; (2) required an individualized assessment of a patient's condition to ensure that the patient's care needs, including the use of restraints, were considered on an individual basis; and (3) was amended to: (a) require that a controlled substance that was left over after the discharge or death of a patient be destroyed in accordance with 21 CFR 1307.21; and (b) delete the requirement that the Department for Public Health handle the disposal of the controlled substances.

In response to a question by Senator Roeding, Subcommittee staff stated that: (1) while the initial staff review for 902 KAR 20:180 questioned how the Cabinet would know exactly when locking restraints would be used if the restraints were to be used in emergency safety situations, the language in the administrative regulation clarified the answer to that question; and (2) while the initial staff review for 902 KAR 20:180 noted that written comments were received objecting to ambulatory restraints, the agency: (a) addressed those comments in its Statement of Consideration; (b) was authorized to amend or not amend the administrative regulation in response to comments received; and (c) chose not to amend the administrative regulation.

The Subcommittee approved a motion by Senator Roeding, seconded by Senator Pendleton, to amend 902 KAR 20:026; 902 KAR 20:048, 902 KAR 20:051, and 902 KAR 20:180 to include physician assistants.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to cite KRS 311.560(3) and (4); and (2) Sections 3(10)(a)3., 3(10)(a)6., 4(3)(a)2., 4(5)(f)1., 4(10)(a), and 4(10)(a)4.b. were amended to include physician assistants among the list of persons authorized to issue prescriptions.

902 KAR 20:048. Operations and services; nursing homes. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to cite KRS 311.560(3) and (4); and (2) Sections 3(11)(a)6., 4(5)(f)1., 4(6), and 4(11)(a)4.b. were amended to include physician assistants among the list of persons authorized to issue prescriptions.

902 KAR 20:051. Operation and services; intermediate care. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to cite KRS 311.560(3) and (4); and (2) Sections 3(11)(a)6., 4(4)(e)1., and 4(9)(c)4.b. were amended to include physician assistants among the list of persons authorized to issue prescriptions.

902 KAR 20:180. Psychiatric hospitals; operation and services. This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to cite KRS 311.560(3) and (4); and (2) Sections 5(3)(b), 5(3)(c)2., and 6(5)(b) were amended to include physician assistants among the list of persons authorized to issue prescriptions.

#### **Cabinet for Human Resources: Department for Public Health: Division of Public Health Protection and Safety: Radiology**

902 KAR 100:010. Definitions. This administrative regulation was amended as follows: Section 1(271) was amended to make language establishing definition consistent with the defined term.

#### **Cabinet for Health Services: Department for Mental Health and Mental Retardation Services: Mental Health**

908 KAR 2:190. Supported living services. Mike Littlefield, Policy Analyst and Administrative Regulations Coordinator, and Doug Riddell, Branch Manager and Staff for the State Supported Living Council, represented the Department.

In response to a question by Senator Roeding, Mr. Littlefield stated that the term "adaptive and therapeutic equipment" included: (1) equipment or prosthetic devices that might help someone who had a disability or a developmental delay; and (2) a broad spectrum of devices.

In response to questions by Senator Roeding, Mr. Riddell stated that: (1) a regional supported living coordinator was located in every region of Kentucky; (2) he would send Senator Roeding a list of the regional supported living coordinators; (3) the regional coordinator for Northern Kentucky: (a) was Arnetta Turner; and (b) could be contacted through the Board of Mental Health in Northern Kentucky; (3) since the Regional Supported Living Council in Northern Kentucky met at the Mental Health and Mental Retardation Center, Ms. Turner would know the dates and times for its meetings; (4) council meetings were open to the public; (5) during its first year of existence in 1993-94, the State Supported Living Council was responsible for granting the awards and grants for the fourteen regions of the state; (6) beginning in 1995, the 14 Mental Health Mental Retardation Center boards were required to establish councils that were: (a) nominated by different advocacy groups and organizations specified in the statute; and (b) operated through the centers with a coordi-

nator, who was hired at each center to: 1. pre-screen the applications; 2. make notification of the meetings; and 3. provide support to the regional councils; (7) the state council was an oversight agency that addressed problems brought to its attention by a regional council; and (8) a person requesting services could request that a supported living community resource developer assist him in finding services in his community.

Mr. Littlefield stated that the state council and General Assembly had hoped to make the services more locally accessible.

In response to questions by Senator Roeding, Mr. Riddell stated that: (1) while the Department did not want to enhance the value of rental property rented to a person with a disability, there were some situations in which a property owner: (a) was willing to rent to someone with a disability; and (b) needed money for modifications to the rental property to accommodate the person with disabilities; (2) to qualify for the \$2,500 for modifications to rental property, a property owner had to assure the Department that he would not: (a) improve the property; and (b) sell the property the following month; (3) a supported living grant could not be used towards the purchase of a vehicle; (4) this administrative regulation established responsibilities for the contract agency, which was a private agency that had contracted with the regional mental health center to provide services the center was not able to provide; (5) the statute established the nominating organizations, which included: (a) the Association for Retarded Citizens; (b) the Coalition for Kentucky Disabilities; (c) advocacy groups, such as PNA; and (d) parents of children in: 1. facilities; or 2. the community; and (6) each council consisted of parents, consumers, and advocates.

This administrative regulation was amended as follows: (1) the STATUTORY AUTHORITY paragraph was amended to correct statutory citations; (2) the NECESSITY, FUNCTION, AND CONFORMITY paragraph was amended to clearly state the necessity for and function served by the administrative regulation, as required by KRS 13A.220(3)(f); (3) Section 4 was amended to include the criteria by which the regional council will make an award; (4) Section 8(1) was amended to clearly set out that an appeal may be based on a council member failing to comply with the requirements of Sections 3(1)(c) through (g), pursuant to KRS 13A.222(4)(a); (5) Section 14 was amended to comply with the format for incorporating a form by reference; (6) Sections 2, 3, 5, 7, and 10 were amended to comply with the formatting requirements of KRS 13A.220(4); and (7) Sections 1, 2, 3, 4, 6, 7, and 8 were amended to comply with the drafting requirements of KRS 13A.222(4).

**The Subcommittee determined that the following administrative regulations complied with statutory requirements:**

#### **Real Estate Appraisers Board**

201 KAR 30:050. Examination, education, and experience requirement. Sam Blackburn, Executive Director, represented the Board. Mr. Blackburn stated that: (1) the Appraisal Foundation in Washington: (a) was created by Congress under Title XI; and (b) established the requirements for education and experience for: 1. the 50 states and the territories; and 2. 85,000 appraisers; (2) in 1991, Kentucky adopted the minimum standards for appraisers established by the foundation; and (3) this amended administrative regulation implemented federally-mandated changes that came into effect January 1 of this year.

In response to a question by Senator Roeding, Mr. Blackburn stated that: (1) the administrative regulation did not include grandfathering provisions; (2) the federal changes were made February 16, 1994, to be effective January 1, 1998; and (3) because notice of the new requirements had been included in each of the quarterly newsletters published since the 1994 changes, he believed that appraisers were well-informed of the new requirements.

#### **Tourism Development Cabinet: Department of Fish and Wildlife Resources: Game**

301 KAR 2:174. Deer hunting zones. Tom Bennett, Commissioner, Roy Grimes, Wildlife Director, and John Wilson represented the Department.

Mr. Bennett stated that this administrative regulation: (1) liberalized and increased the hunting opportunity; and (2) would likely increase the deer kill in 51 counties.

#### **Hunting and Fishing**

301 KAR 3:022. License, tax and permit fees. In response to a question by Representative Allen, Mr. Bennett stated that: (1) this administrative regulation: (a) established the fees for the three bonus permits created in other administrative regulations approved by the Subcommittee; and (b) permitted a hunter, who had purchased a \$21 deer tag and killed his limit, to buy an additional tag for \$10; (2) the fees for the bonus permits were: (a) new; and (b) not required, unless a person wanted to participate in one of the bonus opportunities; and (3) this administrative regulation established the \$5 license for seniors and disabled people that will become effective March 1, 1999.

In response to a question by Representative Lee, Mr. Bennett stated that: (1) this administrative regulation: (a) implemented 1998 House Bill 654 which created the \$5 license for seniors and disabled persons; and (b) exempted seniors and disabled persons from the requirement that they purchase a deer permit, turkey permit, trout stamp, or state waterfowl stamp; and (2) beginning March 1, 1999, the \$5 fee replaced \$91 worth of permits for seniors and the disabled.

#### **Department of Agriculture: Fairs and Shows**

302 KAR 15:010. Administration, state aid to local fairs. Mark Farrow, General Counsel, represented the Department. Mr. Farrow stated that this administrative regulation increased the state aid to local shows and fairs in the amount of money budgeted for that purpose.

#### **Education, Arts, and Humanities Cabinet: Department of Libraries and Archives: Libraries**

725 KAR 2:080. Interstate Library Compact. Jim Nelson, State Librarian and Commissioner, represented the Department. Mr. Nelson stated that this administrative regulation: (1) would allow the state of Ohio to provide state funding for the Greater Cincinnati Library Consortium, which included the public and academic libraries of Northern Kentucky as members; and (2) was required because Ohio law required Kentucky to have similar language to fund the consortium in Kentucky.

#### **Workforce Development Cabinet: Department for Employment Services: Unemployment Insurance**

787 KAR 1:210 & E. Employer contribution rates. Victor Gausepohl, Assistant Director, and Courtney Carter, Manager, Tax Status and Accounting Branch, represented the Department.

In response to a question by Representative Bruce, Mr. Gausepohl stated that while this administrative regulation retained the same rate for unemployment insurance contribution rates, the rate was the lowest possible rate.

#### **Department of Housing, Buildings and Construction: Division of Building Codes Enforcement: Kentucky Building Code**

815 KAR 7:105. Kentucky Building Code/1997. Judith Walden, General Counsel, represented the Department.

In response to a question by Chairman Arnold, Ms. Walden stated that this administrative regulation amended the Kentucky Building Code as follows: (1) Section 101.3 was amended to clarify the rule that a single family dwelling may be constructed using the CABO one- and two- family dwelling code; (2) Section 112.3.1.1 established fast-track plan review fees, to enable a person to pay an extra fee to have special attention given to a site and foundation plan; (3) Section 103.1 was amended to clarify that: (a) the replacement of bedroom windows in single family dwellings or apartments required a building permit; and (b) a window could be replaced with the same type of construction or size that was previously approved when the building was constructed; (4) at the request of the Department of Corrections, Section 410.9 was amended to include in the Building Code the standards used by the Department of Corrections; (5) Section 904.1 was amended to allow buildings to be suppressed by a system that may be mixed with gas on one end and water on the other if the suppression system was: (a) effective; and (b) not incompatible with the design of the sprinkler or suppression system; and (6) Section 1022.2.4 was amended to: (a) govern handrail construction; and (b) provide certain illustrations of what type of handrails were acceptable in addition to others which may meet the es-

established criteria.

In response to questions by Representative Allen, Ms. Walden stated that: (1) the plan review fees: (a) were: 1. charged for the Department's review of a building's construction; and 2. based on a three to five cents charge per square foot; (b) did not apply to a single family dwelling; (c) applied to commercial use buildings; and (d) permitted a person to pay an extra fee to have a quicker review of the site and foundation plans; (2) a builder: (a) generally was required to submit all of the construction documents that were required for approval of the building; and (b) might need a quicker review for some commercial buildings; (3) a fee had always been charged by the Department for its review of a construction's site and foundation plans; (4) after approval of the site and foundation, the builder submitted the additional documents; (5) to receive a quicker review, a builder was required to pay up front 50% of the full fee based on the size of the building, which ranged from a minimum of \$200 to a maximum of \$3,000; (6) because this calculation method differed from the existing method, the average cost of the fee was reduced; (7) the fee was: (a) optional; and (b) only required if a builder did not send in all of his plans; and (8) the Department wanted: (a) builders to send in all the plans as much as possible; (b) the reviews conducted in the proper way; and (c) to charge an extra fee for expediting the review.

In response to questions by Senator Roeding, Ms. Walden stated that: (1) the Building Code included provisions governing the sizes of windows; (2) the bedroom windows in an apartment or single family dwelling were required to be a certain size for safety concerns; (3) a problem arose in twenty year old apartment buildings in which: (a) the required window dimensions differed at the time of construction; (b) the owner wanted to replace the windows with better and more efficient windows; and (c) the construction of the building would be affected by the size of the windows; (4) if the replacement of a window was not an ordinary repair: (a) a permit was required; and (b) a window that had the same dimensions as the previous window could be used; (5) each local community decided the amount of: (a) regulation of single family dwellings within that community; and (b) a fee, if any, that would be charged to apply for a permit; (6) the basic concept was that if a person replaced a bedroom window in Louisville, Lexington, or another community that required a permit, the window was required to be at least the same size as when it was first constructed; (7) a bedroom window was required to be: (a) able to open; and (b) a specified size, to permit escape from a fire; and (8) the Building Code: (a) was available from: 1. the Department; 2. BOCA; or 3. libraries; and (b) cost about \$45.

**The Subcommittee and promulgating administrative bodies agreed to defer consideration of the following administrative regulations to the August, 1998 meeting of the Subcommittee:**

**State Board of Elections: Forms And Procedures**

31 KAR 4:120E. Additional precinct officers.

**Finance and Administration Cabinet: Office of Financial Management and Economic Analysis: Kentucky Private Activity Bond Allocation Committee**

200 KAR 15:010E. Formula for allocation of private activity bonds.

**Department of Agriculture: Livestock Sanitation**

302 KAR 20:040E. Entry into Kentucky.

**Natural Resources and Environmental Protection Cabinet: Department for Environmental Protection: Division of Water: Water Quality**

401 KAR 5:002E. Definitions of terms for 401 KAR Chapter 5.

401 KAR 5:009E. Permits for swine feeding operations.

**Workforce Development Cabinet: Department of Vocational Rehabilitation: Administration**

781 KAR 1:061. Repeal of 781 KAR 1:060.

**Labor Cabinet: Office of Labor Management Relations and Mediation: Kentucky Labor Management Matching Grant Program**

803 KAR 6:010E. Kentucky Labor Management Matching Grant

Program.

**Public Protection and Regulation Cabinet: Department of Insurance: Health Insurance Contracts**

806 KAR 17:141E. Repeal of 806 KAR 17:140.

806 KAR 17:150E. Health benefit plan rate filing requirements.

**Kentucky Racing Commission: Thoroughbred Racing**

810 KAR 1:001. Definitions.

810 KAR 1:009. Jockeys and apprentices.

810 KAR 1:015. Claiming races.

810 KAR 1:016. Running of the race.

**Harness Racing**

811 KAR 1:090. Stimulants and drugs.

811 KAR 1:215. Kentucky Standardbred Development Fund.

**Cabinet for Health Services: Department for Public Health: Division of Local Health Department Operations: Local Health Departments**

902 KAR 8:040. Definition of terms applicable for the personnel program for local health departments.

902 KAR 8:060. Classification and compensation plans for local health departments of Kentucky.

902 KAR 8:070. Recruitment, examination, and certification of eligibles for local health departments of Kentucky.

902 KAR 8:080. Initial appointment, probationary period, layoffs, performance evaluation, and the resignation of employees of local health departments.

902 KAR 8:090. Promotion, transfer, and demotion of local health department employees.

902 KAR 8:100. Disciplinary procedures applicable for local health department employees.

902 KAR 8:110. Disciplinary appeal process applicable for local health department employees.

902 KAR 8:120. Leave provisions applicable to employees of local health departments.

902 KAR 8:130. Participation of local health department employees in political activities.

902 KAR 8:140. Appointment of a health officer or a health department director of a local health department.

**Division for Public Health Protection and Safety: Milk and Milk Products**

902 KAR 50:031. Standards for producer eligibility for manufacturing grade milk.

902 KAR 50:032. Standards for farm requirements for manufacturing grade milk.

902 KAR 50:033. Standards for enforcement procedures for manufacturing grade milk.

**Cabinet for Families and Children: Department for Social Services: Division of Family Services: Day Care**

905 KAR 2:160E. Child day care assistance program.

**Cabinet for Health Services: Department for Medicaid Services: Division of Administration and Development: Medicaid Services**

907 KAR 1:006E. Coverage for persons eligible for Title XVIII benefits.

907 KAR 1:011E. Technical eligibility requirements.

907 KAR 1:022E. Nursing facility and intermediate facility for the mentally retarded services.

907 KAR 1:026E. Dental services.

907 KAR 1:560E. Medicaid hearing and appeals regarding eligibility.

907 KAR 1:563E. Medicaid covered services hearing appeals process for recipients.

907 KAR 1:605E. Medicaid procedures for determining initial and continuing eligibility.

907 KAR 1:626E. Reimbursement of dental services.

907 KAR 1:640E. Income standards for Medicaid.

907 KAR 1:645E. Resource standards for Medicaid.

907 KAR 1:755E. Preadmission screening and resident review (PASRR) program.

**Department for Mental Health and Mental Retardation Services: Substance Abuse**

908 KAR 1:311. Repeal of 908 KAR 1:010, 908 KAR 1:020, 908 KAR 1:030, 908 KAR 1:040, 908 KAR 1:050, 908 KAR 1:060, 908 KAR 1:070, 908 KAR 1:080, 908 KAR 1:090, 908 KAR 1:100, 908 KAR 1:110, 908 KAR 1:120, 908 KAR 1:130, 908 KAR 1:140, 908 KAR 1:150, 908 KAR 1:160, 908 KAR 1:170, 908 KAR 1:180, 908 KAR 1:190, 908 KAR 1:200, 908 KAR 1:210, 908 KAR 1:220, 908 KAR 1:230, 908 KAR 1:240, 908 KAR 1:250, and 908 KAR 1:260.

**Mental Health**

908 KAR 2:210E. Domestic violence offender treatment certification standards.

**OTHER BUSINESS:**

**KRS Chapter 262: Watershed Conservancy District Formation**

David Maloney, Chairman, Union County Conservation District; Lester Carruthers, Natural Resources Conservation Service; and Steve Coleman, Director, Division of Conservation, appeared before the Subcommittee.

Subcommittee staff stated that: (1) questions had been raised concerning the type of tax or funding for the watershed conservancy districts; (2) Subcommittee staff had met with the parties concerned and Mr. Coleman; (3) the issue that was raised was whether: (a) the millage tax would have to be imposed when the conservation district was established; or (b) a tax on the land could be imposed; (4) because the language in applicable statutes was vague, requirements relating to funding had been inconsistent; (5) after meeting with Mr. Coleman, the Cabinet had agreed: (a) to permit the Union County Conservation District to establish the district and use the land tax, rather than being restricted to the millage tax; and (b) while it would not object to the land tax, it could not prevent another agency from objecting; and (6) the Cabinet requested the Subcommittee approve a motion requesting LRC to refer the amendment of KRS Chapter 262 to an interim committee of appropriate jurisdiction to work with the Cabinet to clear up the language, because existing language: (a) did not clearly establish requirements relating to funding; and (b) had resulted in inconsistent application.

The Subcommittee approved a motion by Representative Bruce to request LRC to refer the issues raised by KRS Chapter 262 to the appropriate interim committee to work with the Cabinet to develop amendments to KRS Chapter 262 to clearly establish funding requirements for watershed conservancy districts.

**House Bill 106: Motorcycle Helmet Law:**

Subcommittee staff stated that: (1) questions were raised concerning House Bill 106, the motorcycle helmet law, relating to the implementation of its requirement for: (a) health insurance; (b) forms relating to health insurance; and (c) decals; (2) Chairman Arnold and other members of the Subcommittee had received a number of questions concerning implementation of House Bill 106; (3) Subcommittee staff had: (a) discussed the issues with the Transportation Cabinet personnel; and (b) informed them that an administrative regulation establishing requirements, such as those relating to the decals and forms, was required to be promulgated before they were imposed; and (4) Cabinet personnel had: (a) agreed that an administrative regulation was required; and (b) stated that the Cabinet would promulgate an administrative regulation.

Chairman Arnold stated that, those governed by the law who were in doubt as to what it required, and those who were unsure whether they were governed by the law, should wear helmets.

Senator Roeding stated that he had been contacted by bikers, who have attempted to obtain decals because the law became effective on the fifteenth.

Subcommittee staff stated that: (1) staff had met with bikers; (2) while a lawsuit had been filed against the law, the court had not issued a decision regarding the request for an injunction; (3) language in the law relating to implementation, and the jurisdiction of administrative bodies over requirements relating to implementation, is confusing; and (4) Cabinet staff had been informed that: (a) if the Cabinet determines it is required or authorized to implement a form for use by the clerks in the performance of its duties under the law that relate to insurance companies, KRS Chapter 13A requires implementation by administrative regulation; and (b) an emergency administrative regulation could have been promulgated, because the 1. matter related to public health, safety, and welfare; and 2. decals

were said to be ready for sale and use on the 15th.

In response to questions by Senator Roeding relating to the availability of the decals, Subcommittee staff stated that the decals could not be sold until the 15th, the effective date of the statute.

Representative Lee stated that, at the Transportation Committee meeting last week, the Transportation Cabinet assured Committee members that the decals would be in every clerk's office by tomorrow.

Chairman Arnold stated that: (1) the Transportation Cabinet had stated the same thing; (2) if there is an error and the decals are not available, the clerks need to tell the bikers who come in for their decal to have their health insurance card with them at all times; (3) this was what the clerks in his area were telling bikers; and (4) bikers should be sure to: (a) have at least some form of identification showing they have health care insurance with somebody; or (b) wear their helmets.

Representative Lee stated that proof of insurance was also required of any rider who accompanies the operator of a motorcycle, and for any passengers.

Chairman Arnold stated that after the decals are available, those driving or riding without helmets need to carry proof of health insurance.

Representative Lee stated that this was the interpretation Transportation Committee members received from the Kentucky State Police last Tuesday at the Transportation Committee meeting.

Representative Allen stated that the law was stupid, because, while a person was required to purchase a decal for his license plate if he was not going to wear a helmet, and he had health insurance, he would not have to have health insurance or a decal if he rode his bike while wearing a helmet.

**The Subcommittee adjourned at 11:35 a.m. until August 4, 1998, at 10 a.m. in Room 149 of the Capitol Annex.**



OTHER COMMITTEE REPORTS

**COMPILER'S NOTE:** In accordance with KRS 13A.290(9), the following reports were forwarded to the Legislative Research Commission by the appropriate jurisdictional committees and are hereby printed in the Administrative Register. The administrative regulations listed in each report became effective upon adjournment of the committee meeting at which they were considered.

**Interim Joint Committee on  
Agriculture and Natural Resources  
Meeting of July 7, 1998**

Administrative regulations were available for consideration by the Interim Joint Committee on Agriculture and Natural Resources during its meeting of July 7, 1998 having been referred to the Committee on June 12, 1998, pursuant to KRS 13A.290(6):

The following administrative regulations were found to comply with KRS Chapter 13A:

Agricultural Experiment Station  
12 KAR 4:170E

Department of Fish and Wildlife Resources  
301 KAR 3:010

Natural Resources and Environmental Protection Cabinet  
Division of Air Quality  
401 KAR 58:005  
401 KAR 58:025

Department of Surface Mining Reclamation and Enforcement  
405 KAR 16:060  
405 KAR 18:060

The following administrative regulations were found to be deficient pursuant to KRS 13A.290(7) and 13A.030(2): None

**The Committee rationale for each finding of deficiency is attached to and made a part of this memorandum.**

The following administrative regulations were approved as amended at the Committee meeting pursuant to KRS 13A.320: None

**The wording of the amendment of each such administrative regulation is attached to and made a part of this memorandum.**

The following administrative regulation was deferred pursuant to KRS 13A.300: None

The following administrative regulation was reviewed but no action was taken: None

Committee activity in regard to review of the above-referenced administrative regulations is reflected in the minutes of the July 7, 1998 meeting, which are hereby incorporated by reference. Additional committee findings, recommendations, or comments, if any, are attached hereto.

## CUMULATIVE SUPPLEMENT

### Locator Index - Effective Dates ..... B2

The Locator Index lists all administrative regulations published in VOLUME 25 of the Administrative Register from July, 1998 through June, 1999. It also lists the page number on which each administrative regulation is published, the effective date of the administrative regulation after it has completed the review process, and other action which may affect the administrative regulation. NOTE: The administrative regulations listed under VOLUME 24 are those administrative regulations that were originally published in Volume 24 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1998 bound Volumes were published.

### KRS Index ..... B8

The KRS Index is a cross-reference of statutes to which administrative regulations relate. These statute numbers are derived from the RELATES TO line of each administrative regulation submitted for publication in VOLUME 25 of the Administrative Register.

### Subject Index ..... B11

The Subject Index is a general index of administrative regulations published in VOLUME 25 of the Administrative Register, and is mainly broken down by agency.

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	24 Ky.R. Page No.	Effective Date	Regulation Number	24 Ky.R. Page No.	Effective Date
----------------------	----------------------	-------------------	----------------------	----------------------	-------------------

## VOLUME 24

The administrative regulations listed under VOLUME 24 are those administrative regulations that were originally published in Volume 24 (last year's) issues of the Administrative Register but had not yet gone into effect when the 1998 bound Volumes were published.

### EMERGENCY ADMINISTRATIVE REGULATIONS: (Note: Emergency regulations expire 170 days from publication, or 170 days from publication plus number of days of requested extensions, or upon replacement or repeal, whichever occurs first)

12 KAR 4:170E	2326	4-7-98
Expires		10-18-98
31 KAR 4:120E	2575	4-22-98
200 KAR 15:010E	2327	4-7-98
302 KAR 20:040E	2330	4-3-98
401 KAR 5:002E	2576	4-17-98
401 KAR 5:009E	2588	4-17-98
501 KAR 1:030E	1625	1-8-98
Replaced		7-13-98
501 KAR 6:020E	1631	1-8-98
Replaced	2149	7-13-98
501 KAR 6:080E	1633	1-8-98
Replaced	2152	7-13-98
502 KAR 31:010E	2076	2-27-98
Withdrawn		7-14-98
601 KAR 2:020E	1863	2-13-98
787 KAR 1:210E	2078	3-10-98
803 KAR 6:010E	2333	3-20-98
806 KAR 6:100E	1227	10-24-97
Replaced	2719	6-25-98
806 KAR 17:110E	1492	12-12-97
Replaced	2689	6-15-98
806 KAR 17:141E	2601	4-15-98
806 KAR 17:150E	2602	4-15-98
815 KAR 8:045E	2079	2-27-98
Replaced	2483	7-13-98
904 KAR 2:015E	1634	1-12-98
Replaced		6-11-98
905 KAR 2:160E	2605	4-20-98
907 KAR 1:006E	2337	4-6-98
907 KAR 1:011E	2339	4-6-98
907 KAR 1:022E	2080	2-18-98
907 KAR 1:025E	2086	2-18-98
Withdrawn		6-30-98
907 KAR 1:026E	2612	4-24-98
907 KAR 1:560E	2093	2-18-98
907 KAR 1:563E	2097	2-18-98
907 KAR 1:605E	2344	4-6-98
907 KAR 1:626E	2614	4-24-98
907 KAR 1:640E	2346	4-6-98
907 KAR 1:645E	2350	4-6-98
907 KAR 1:755E	2100	2-18-98
907 KAR 3:030E	1639	12-19-97
908 KAR 2:210E	2352	4-6-98

### ORDINARY ADMINISTRATIVE REGULATIONS:

13 KAR 2:045		
Amended	2136	
Amended	2705	(See Volume 25)
201 KAR 1:300		
Amended	2406	7-13-98

201 KAR 8:400		
Amended	2409	(See Volume 25)
201 KAR 11:011		
Amended	2410	(See Volume 25)
201 KAR 11:147		
Amended	2412	(See Volume 25)
201 KAR 11:170		
Amended	2413	(See Volume 25)
201 KAR 11:175		
Amended	2414	(See Volume 25)
201 KAR 11:190		
Amended	2733	(See Volume 25)
201 KAR 11:230		
Amended	2415	(See Volume 25)
201 KAR 11:350		
Amended	2417	(See Volume 25)
201 KAR 19:087	2241	
As Amended	2617	6-15-98
201 KAR 19:095		
Amended	2141	
As Amended	2619	6-15-98
201 KAR 20:056		
Amended	2421	(See Volume 25)
201 KAR 30:050		
Amended	2736	
202 KAR 3:010	2782	(See Volume 25)
202 KAR 3:030	2783	
301 KAR 2:041		
Amended	2739	
301 KAR 2:172		
Amended	2741	(See Volume 25)
301 KAR 2:174		
Amended	2744	
301 KAR 2:176		
Amended	2745	(See Volume 25)
301 KAR 2:178		
Amended	2748	(See Volume 25)
301 KAR 2:230		
Amended	2752	(See Volume 25)
301 KAR 3:010		
Amended	2422	(See Volume 25)
301 KAR 3:022		
Amended	2754	
301 KAR 3:030		
Amended	2756	(See Volume 25)
302 KAR 10:100	2242	
As Amended	2620	6-10-98
302 KAR 15:010		
Amended	2757	
302 KAR 31:040	2243	(See Volume 25)
401 KAR 58:005		
Amended	1920	
Amended	2710	7-7-98
401 KAR 58:025		
Amended	1927	
Amended	2717	7-7-98
401 KAR 63:060		
Amended	1765	6-10-98
401 KAR 63:100		
Amended	1770	6-10-98



# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	24 Ky.R. Page No.	Effective Date	Regulation Number	24 Ky.R. Page No.	Effective Date
401 KAR 63:104	1798	6-10-98	600 KAR 6:050		
401 KAR 63:541	1800	6-10-98	Amended	2760	
401 KAR 63:560	1801	6-10-98	600 KAR 6:060		
401 KAR 63:640	1803		Amended	2762	
As Amended	2621	6-10-98	600 KAR 6:080		
401 KAR 63:680	1805	6-10-98	Amended	2765	(See Volume 25)
401 KAR 63:741	1806		601 KAR 1:005		
As Amended	2621	6-10-98	Amended	1932	
401 KAR 63:780	1808	6-10-98	Amended	2392	6-16-98
401 KAR 63:800	1810	6-10-98	601 KAR 2:020	2784	(See Volume 25)
401 KAR 63:820	1811	6-10-98	603 KAR 4:040		
401 KAR 63:900	1813	6-10-98	Amended	1936	
401 KAR 63:920	1814	6-10-98	Amended	2395	6-16-98
401 KAR 63:940	1816	6-10-98	701 KAR 5:110		
401 KAR 63:960	1818	6-10-98	Amended	2425	(See Volume 25)
405 KAR 8:001			704 KAR 3:303		
Amended	667		Amended	1941	
As Amended	2622	6-10-98	Amended	2401	
405 KAR 8:030			As Amended	2681	6-16-98
Amended	675		704 KAR 20:082	2481	(See Volume 25)
Amended	1313		704 KAR 20:670		
As Amended	2628	6-10-98	Amended	2426	(See Volume 25)
405 KAR 8:040			725 KAR 2:080	2482	
Amended	687		781 KAR 1:020		
Amended	1325		Amended	2429	(See Volume 25)
As Amended	2639	6-10-98	781 KAR 1:040		
405 KAR 16:001			Amended	2433	(See Volume 25)
Amended	704		781 KAR 1:061	2787	
As Amended	2652	6-10-98	787 KAR 1:210		
405 KAR 16:060			Amended	2767	
Amended	710		803 KAR 2:301		
Amended	1341	(See Volume 25)	Amended	2152	7-13-98
405 KAR 16:090			803 KAR 2:320		
Amended	716		Amended	2154	7-13-98
As Amended	2658	6-10-98	803 KAR 2:500		
405 KAR 16:100			Amended	2160	7-13-98
Amended	719		803 KAR 3:050		
As Amended	2660	6-10-98	Amended	2163	7-13-98
405 KAR 16:160			803 KAR 25:010		
Amended	723		Amended	2436	7-13-98
As Amended	2663	6-10-98	803 KAR 25:096		
405 KAR 18:001			Amended	2166	
Amended	725		As Amended	2681	6-16-98
As Amended	2664	6-10-98	803 KAR 25:101		
405 KAR 18:060			Amended	2169	
Amended	732		As Amended	2684	6-16-98
Amended	1347	(See Volume 25)	803 KAR 25:190		
405 KAR 18:090			Amended	1771	
Amended	738		Amended	2124	
As Amended	2670	6-10-98	As Amended	2686	6-16-98
405 KAR 18:100			806 KAR 6:100	2248	
Amended	741		Amended	2719	6-25-98
As Amended	2672	6-10-98	806 KAR 17:110	2257	
405 KAR 18:160			As Amended	2689	6-16-98
Amended	745		808 KAR 10:010		
As Amended	2675	6-10-98	Amended	2172	(See Volume 25)
405 KAR 18:210			808 KAR 10:020		
Amended	747		Amended	2173	(See Volume 25)
As Amended	2676	6-10-98	808 KAR 10:030		
501 KAR 1:030			Amended	2174	(See Volume 25)
Amended	2143	(See Volume 25)	808 KAR 10:040		
501 KAR 6:020			Amended	2176	(See Volume 25)
Amended	2149	7-13-98	808 KAR 10:080		
501 KAR 6:080			Amended	2177	(See Volume 25)
Amended	2152	7-13-98	808 KAR 10:090		
			Amended	2178	(See Volume 25)

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	24 Ky.R. Page No.	Effective Date	Regulation Number	24 Ky.R. Page No.	Effective Date
808 KAR 10:110			815 KAR 8:045	2483	7-13-98
Amended	2179		815 KAR 20:020		
Amended	2728	(See Volume 25)	Amended	2460	7-13-98
808 KAR 10:130			815 KAR 20:055		
Amended	2180	(See Volume 25)	Amended	2463	7-13-98
808 KAR 10:141	2262	(See Volume 25)	815 KAR 20:120		
808 KAR 10:150			Amended	2465	7-13-98
Amended	2181	(See Volume 25)	902 KAR 8:040		
808 KAR 10:160			Amended	2192	
Amended	2182	(See Volume 25)	902 KAR 8:060		
808 KAR 10:170			Amended	2194	
Amended	2183	(See Volume 25)	902 KAR 8:070		
808 KAR 10:200			Amended	2197	
Amended	2185	(See Volume 25)	902 KAR 8:080		
808 KAR 10:210			Amended	2200	
Amended	2186	(See Volume 25)	902 KAR 8:090		
808 KAR 10:225			Amended	2204	
Amended	2188	6-25-98	902 KAR 8:100		
808 KAR 10:240			Amended	2206	
Amended	2190	(See Volume 25)	902 KAR 8:110		
808 KAR 10:260			Amended	2208	
Amended	2190	(See Volume 25)	902 KAR 8:120		
808 KAR 10:300			Amended	2210	
Amended	2191	(See Volume 25)	902 KAR 8:130		
808 KAR 10:310	2263	(See Volume 25)	Amended	2215	
808 KAR 10:320	2264	(See Volume 25)	902 KAR 8:140		
808 KAR 10:330	2265	(See Volume 25)	Amended	2216	
808 KAR 10:340	2266	(See Volume 25)	902 KAR 20:026		
808 KAR 10:350	2268	(See Volume 25)	Amended	2218	(See Volume 25)
808 KAR 10:360	2269	(See Volume 25)	902 KAR 20:048		
808 KAR 10:370	2270	(See Volume 25)	Amended	2226	(See Volume 25)
808 KAR 10:380	2271	(See Volume 25)	902 KAR 20:051		
808 KAR 10:390	2273	(See Volume 25)	Amended	2233	(See Volume 25)
810 KAR 1:001			902 KAR 20:180		
Amended	2445		Amended	1962	
810 KAR 1:009			As Amended	2401	(See Volume 25)
Amended	2447		902 KAR 50:031		
810 KAR 1:015			Amended	1573	
Amended	2450		902 KAR 50:032		
810 KAR 1:016			Amended	1575	
Amended	2452		902 KAR 55:033		
810 KAR 1:018			Amended	1578	
Amended	1776		902 KAR 100:010		
As Amended	2694	6-16-98	Amended	2770	(See Volume 25)
810 KAR 1:026			904 KAR 2:015		
Amended	1779		Amended	2472	(See Volume 25)
As Amended	2698	6-16-98	905 KAR 1:360		
811 KAR 1:085			Amended	2477	(See Volume 25)
Amended	1782		907 KAR 1:595	2788	
As Amended	2702	6-16-98	907 KAR 3:030	2790	
811 KAR 1:090			908 KAR 1:311	2484	
Amended	2454		908 KAR 1:370	2485	(See Volume 25)
811 KAR 1:215			908 KAR 2:190	2043	
Amended	2456		Amended	2729	(See Volume 25)
815 KAR 7:105			*Statement of Consideration Not Filed by Deadline		
Amended	2769				



# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	25 Ky.R. Page No.	Effective Date	Regulation Number	25 Ky.R. Page No.	Effective Date
<b>VOLUME 25</b>					
<b>EMERGENCY ADMINISTRATIVE REGULATIONS:</b> (Note: Emergency regulations expire 170 days from publication, or 170 days from publication plus number of days of requested extensions, or upon replacement or repeal, whichever occurs first)			11 KAR 12:060		
			Amended	395	
			11 KAR 12:070		
			Amended	397	
			11 KAR 14:010	451	
			11 KAR 14:020	453	
			11 KAR 14:030	454	
			11 KAR 14:040	456	
			11 KAR 14:050	457	
			11 KAR 14:060	459	
			11 KAR 14:070	460	
			11 KAR 14:080	462	
			11 KAR 15:010	464	
			11 KAR 15:020	465	
			11 KAR 15:030	467	
			11 KAR 15:040	468	
			11 KAR 15:050	470	
			11 KAR 15:060	472	
			11 KAR 15:070	474	
			13 KAR 2:045		
			As Amended	51	7-13-98
			101 KAR 1:325		
			Amended	398	
			200 KAR 7:011	139	
			200 KAR 15:010		
			Amended	400	
			201 KAR 8:400		
			As Amended	55	7-9-98
			201 KAR 8:440	475	
			201 KAR 11:011		
			As Amended	293	
			201 KAR 11:147		
			As Amended	57	7-13-98
			201 KAR 11:170		
			As Amended	293	
			201 KAR 11:175		
			As Amended	57	7-13-98
			201 KAR 11:190		
			As Amended	294	
			201 KAR 11:230		
			As Amended	297	
			201 KAR 11:350		
			As Amended	58	7-13-98
			201 KAR 20:056		
			As Amended	60	7-9-98
			201 KAR 26:121		
			Amended	403	
			201 KAR 26:125		
			Amended	406	
			201 KAR 26:180		
			Amended	407	
			201 KAR 26:215		
			Amended	408	
			201 KAR 34:030	476	
			201 KAR 34:040	476	
			201 KAR 36:020	480	
			201 KAR 36:030	481	
			201 KAR 36:040	483	
			201 KAR 36:050	485	
			202 KAR 3:010		
			As Amended	299	
			301 KAR 1:090		
			Amended	409	
31 KAR 4:130E	36	5-20-98			
105 KAR 1:170E	222	7-14-98			
105 KAR 1:230E	223	7-14-98			
200 KAR 6:060E	225	7-15-98			
501 KAR 1:030E	226	7-14-98			
501 KAR 1:050E	229	7-14-98			
501 KAR 2:070E	230	7-14-98			
501 KAR 6:020E	231	7-14-98			
501 KAR 14:010E	233	7-14-98			
502 KAR 31:020E	234	7-14-98			
603 KAR 7:080E	37	5-15-98			
735 KAR 2:010E	236	6-30-98			
735 KAR 2:020E	238	6-30-98			
735 KAR 2:030E	239	6-30-98			
735 KAR 2:040E	240	6-30-98			
735 KAR 2:050E	241	6-30-98			
735 KAR 2:060E	243	6-30-98			
750 KAR 2:010E	244	7-1-98			
787 KAR 1:200E	245	6-30-98			
803 KAR 2:306E	246	7-2-98			
803 KAR 2:307E	249	7-2-98			
803 KAR 2:308E	251	7-2-98			
803 KAR 2:311E	253	7-2-98			
803 KAR 2:316E	255	7-2-98			
803 KAR 2:317E	256	7-2-98			
803 KAR 2:320E	258	7-13-98			
803 KAR 2:403E	264	7-2-98			
803 KAR 2:404E	265	7-2-98			
803 KAR 2:418E	269	7-2-98			
803 KAR 2:425E	271	7-2-98			
806 KAR 17:160E	272	6-19-98			
806 KAR 17:170E	274	7-2-98			
806 KAR 17:180E	275	6-19-98			
806 KAR 17:190E	277	7-2-98			
806 KAR 17:200E	278	7-2-98			
806 KAR 17:210E	280	7-2-98			
806 KAR 17:220E	281	7-2-98			
904 KAR 2:018E	42	5-15-98			
904 KAR 2:380E	44	6-15-98			
904 KAR 2:490E	283	6-22-98			
907 KAR 1:025E	285	6-30-98			
907 KAR 3:065E	48	5-15-98			
<b>ORDINARY ADMINISTRATIVE REGULATIONS:</b>					
11 KAR 3:100					
Amended	375				
11 KAR 4:050					
Amended	385				
11 KAR 4:070	450				
11 KAR 5:001					
Amended	390				
11 KAR 12:010					
Amended	392				
11 KAR 12:040					
Amended	393				



# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	25 Ky.R Page No.	Effective Date	Regulation Number	25 Ky.R. Page No.	Effective Date
301 KAR 1:155			781 KAR 1:020		
Amended	410		As Amended	78	7-13-98
301 KAR 1:201			781 KAR 1:030		
Amended	411		Amended	131	
301 KAR 2:020			781 KAR 1:040		
Repealed		4-6-95	As Amended	82	7-13-98
301 KAR 2:172			781 KAR 1:050		
As Amended	300		Amended	431	
301 KAR 2:176			782 KAR 1:030		
As Amended	302		Amended	133	
301 KAR 2:178			782 KAR 1:040		
As Amended	303		Amended	136	
301 KAR 2:179	486		789 KAR 1:010	147	
301 KAR 2:230			802 KAR 1:010		
As Amended	306		Amended	434	
301 KAR 3:010			806 KAR 3:131	491	
As Amended	62	7-7-98	806 KAR 9:241	492	
301 KAR 3:030			806 KAR 39:081	493	
As Amended	307		808 KAR 10:010		
302 KAR 20:040			As Amended	83	6-25-98
Amended	415		808 KAR 10:020		
302 KAR 20:051	488		As Amended	84	6-25-98
302 KAR 31:040			808 KAR 10:030		
As Amended	308		As Amended	85	6-25-98
405 KAR 16:060			808 KAR 10:040		
As Amended	63	7-7-98	As Amended	86	6-25-98
405 KAR 18:060			808 KAR 10:080		
As Amended	66	7-7-98	As Amended	86	6-25-98
501 KAR 1:030			808 KAR 10:090		
As Amended	69	7-13-98	As Amended	87	6-25-98
501 KAR 6:040			808 KAR 10:110		
Amended	125		As Amended	87	6-25-98
501 KAR 6:110			808 KAR 10:130		
Amended	126		As Amended	88	6-25-98
501 KAR 8:011	490		808 KAR 10:140		
600 KAR 6:080			Repealed	88	6-25-98
Amended	350		808 KAR 10:141		
601 KAR 1:115			As Amended	88	6-25-98
Amended	418		808 KAR 10:150		
601 KAR 1:140			As Amended	88	6-25-98
Amended	420		808 KAR 10:160		
601 KAR 1:145			As Amended	89	6-25-98
Amended	422		808 KAR 10:170		
601 KAR 2:020			As Amended	90	6-25-98
Amended	352		808 KAR 10:190		
601 KAR 9:135			Repealed	88	6-25-98
Amended	425		808 KAR 10:200		
701 KAR 5:110			As Amended	91	6-25-98
As Amended	75	7-13-98	808 KAR 10:210		
702 KAR 7:065			As Amended	91	
Amended	127		As Amended	313	6-25-98
704 KAR 20:082			808 KAR 10:220		
As Amended	76	7-13-98	Repealed	88	6-25-98
704 KAR 20:305			808 KAR 10:230		
Amended	429		Repealed	88	6-25-98
704 KAR 20:670			808 KAR 10:240		
As Amended	76	7-13-98	As Amended	94	6-25-98
704 KAR 20:690			808 KAR 10:260		
Amended	129		As Amended	94	6-25-98
772 KAR 1:010	139		808 KAR 10:270		
772 KAR 1:020	141		Repealed	88	6-25-98
772 KAR 1:030	142		808 KAR 10300		
772 KAR 1:040	142		As Amended	95	6-25-98
772 KAR 1:050	144		808 KAR 10:310		
772 KAR 1:060	145		As Amended	95	6-25-98
772 KAR 1:070	146				

# LOCATOR INDEX - EFFECTIVE DATES

Regulation Number	25 Ky.R. Page No.	Effective Date	Regulation Number	25 Ky.R. Page No.	Effective Date
808 KAR 10:320					
As Amended	95	6-25-98			
808 KAR 10:330					
As Amended	96	6-25-98			
808 KAR 10:340					
As Amended	96	6-25-98			
808 KAR 10:350					
As Amended	97	6-25-98			
808 KAR 10:360					
As Amended	98	6-25-98			
808 KAR 10:370					
As Amended	98	6-25-98			
808 KAR 10:380					
As Amended	99	6-25-98			
808 KAR 10:390					
As Amended	101	6-25-98			
902 KAR 8:060					
Amended	108				
902 KAR 8:070					
Amended	110				
902 KAR 8:080					
Amended	113				
902 KAR 8:100					
Amended	116				
902 KAR 8:120					
Amended	118				
902 KAR 8:140					
Amended	123				
902 KAR 20:026					
As Amended	315				
902 KAR 20:048					
As Amended	321				
902 KAR 20:051					
As Amended	328				
902 KAR 20:180					
As Amended	333				
902 KAR 100:010					
As Amended	336				
904 KAR 2:015					
As Amended	101	6-11-98			
905 KAR 1:360					
As Amended	105	6-11-98			
907 KAR 1:006					
Amended	437				
907 KAR 1:011					
Amended	438				
907 KAR 1:605					
Amended	442				
907 KAR 1:640					
Amended	444				
907 KAR 1:645					
Amended	447				
908 KAR 1:370					
Amended	355				
908 KAR 2:190					
As Amended	346				



## KRS SECTION

## REGULATION

## KRS SECTION

## REGULATION

## KRS INDEX

12.290	735 KAR	2:010E	157.665	750 KAR	2:010E
	735 KAR	2:020E	161.028	704 KAR	20:305
	735 KAR	2:030E	161.030	704 KAR	20:305
	735 KAR	2:040E		704 KAR	20:690
	735 KAR	2:050E	Chapter 163	603 KAR	7:080E
	735 KAR	2:060E	163.450-163.470	782 KAR	1:030
Chapter 13B	802 KAR	1:010		782 KAR	1:040
16.530	105 KAR	1:170E	163.510	735 KAR	2:010E
17.500	502 KAR	31:020E		735 KAR	2:020E
18A.075	101 KAR	1:325		735 KAR	2:030E
18A.0751	101 KAR	1:325		735 KAR	2:040E
18A.111	101 KAR	1:325		735 KAR	2:050E
44.030	11 KAR	4:050		735 KAR	2:060E
Chapter 45A	200 KAR	7:011	164.740-164.785	11 KAR	5:001
Chapter 56	200 KAR	7:011	164.744	11 KAR	3:100
56.463	200 KAR	6:060E	164.748	11 KAR	3:100
56.800	200 KAR	6:060E		11 KAR	4:050
56.803	200 KAR	6:060E	164.753	11 KAR	3:100
61.525	105 KAR	1:170E	164A.300-164A.380	11 KAR	12:010
61.526	105 KAR	1:170E	164A.305	11 KAR	12:040
61.540	105 KAR	1:170E	164A.310	11 KAR	12:070
61.542	105 KAR	1:170E	164A.325	11 KAR	12:060
61.545	105 KAR	1:170E	164A.330	11 KAR	12:040
61.625	105 KAR	1:170E		11 KAR	12:070
61.637	105 KAR	1:230E	164A.335	11 KAR	12:070
78.540	105 KAR	1:170E	164A.350	11 KAR	12:060
Chapter 96A	603 KAR	7:080E	164A.410	772 KAR	1:060
103.200	200 KAR	15:010	164A.560	772 KAR	1:010
103.2101	200 KAR	15:010		772 KAR	1:020
103.286	200 KAR	15:010	164A.565	772 KAR	1:010
117.085	301 KAR	4:130E		772 KAR	1:020
131.310-131.370	802 KAR	1:010	164A.570	772 KAR	1:030
131.565	11 KAR	4:050	164A.575	772 KAR	1:020
133.120	802 KAR	1:010		772 KAR	1:040
138.450-138.470	601 KAR	1:145	164A.580	772 KAR	1:020
138.463	601 KAR	1:140		772 KAR	1:040
148.029	301 KAR	2:179	164A.585	772 KAR	1:020
150.010	301 KAR	1:155		772 KAR	1:040
150.025	301 KAR	1:090	164A.590	772 KAR	1:020
	301 KAR	2:179		772 KAR	1:040
150.105	301 KAR	2:179	164A.595	772 KAR	1:020
150.120	301 KAR	1:155		772 KAR	1:040
150.170	301 KAR	1:155	164A.600	772 KAR	1:020
150.175	301 KAR	1:090		772 KAR	1:040
	301 KAR	1:155	164A.605	772 KAR	1:020
150.360	301 KAR	1:090		772 KAR	1:050
	301 KAR	2:179	164A.610	772 KAR	1:070
150.390	301 KAR	2:179	164A.620	772 KAR	1:020
150.445	301 KAR	1:155		772 KAR	1:060
150.450	301 KAR	1:155	186.020	601 KAR	9:135
150.470	301 KAR	1:201	186.050	601 KAR	9:135
150.640	301 KAR	2:179	186.051	601 KAR	9:135
150.710	301 KAR	2:179	186.276	601 KAR	1:115
150.990	301 KAR	1:155	186.281	601 KAR	1:115
	301 KAR	1:201		601 KAR	1:145
Chapter 151B	603 KAR	7:080E	186.286	601 KAR	1:115
151B.190	781 KAR	1:030	Chapter 194	603 KAR	7:080E
	781 KAR	1:050	194.025	907 KAR	3:065E
	789 KAR	1:010	Chapter 195	603 KAR	7:080E
154.690	601 KAR	1:145	195.025	907 KAR	3:065E
156.070	702 KAR	7:065	Chapter 196	501 KAR	6:020E
Chapter 157	603 KAR	7:080E		501 KAR	6:040
157.615	750 KAR	2:010E		501 KAR	6:110
157.650	750 KAR	2:010E	196.035	501 KAR	8:011
157.655	750 KAR	2:010E	Chapter 197	501 KAR	6:020E
157.660	750 KAR	2:010E		501 KAR	6:040

## KRS SECTION

## REGULATION

## KRS SECTION

## REGULATION

197.020  
Chapter 202A  
  
Chapter 202B  
Chapter 205  
205.200  
205.211  
205.520  
  
  
205.520-205.625  
205.710-205.800  
205.992  
Chapter 209  
Chapter 210  
Chapter 216  
Chapter 257  
257.010  
Chapter 273  
Chapter 281  
  
281.014  
281.600-281.670  
281.626  
304.39-350  
309.1315  
309.1335  
313.080  
313.305  
319.015  
319.032  
  
319.050  
335.515  
335.525  
335.530  
335.535  
335.540  
  
335.545  
338.051

338.061

341.360  
341.380  
407.010-407.480  
431.240

501 KAR 6:110  
501 KAR 8:011  
501 KAR 14:010E  
603 KAR 7:080E  
603 KAR 7:080E  
603 KAR 7:080E  
904 KAR 2:018E  
904 KAR 2:018E  
907 KAR 1:006  
907 KAR 1:011  
907 KAR 1:605  
907 KAR 1:640  
907 KAR 1:645  
904 KAR 2:380E  
904 KAR 2:380E  
904 KAR 2:380E  
603 KAR 7:080E  
603 KAR 7:080E  
603 KAR 7:080E  
302 KAR 20:040  
302 KAR 20:051  
603 KAR 7:080E  
601 KAR 1:115  
603 KAR 7:080E  
907 KAR 3:065E  
601 KAR 1:140  
601 KAR 1:145  
806 KAR 39:081  
201 KAR 34:040  
201 KAR 34:030  
201 KAR 8:440  
201 KAR 8:440  
201 KAR 26:215  
201 KAR 26:121  
201 KAR 26:180  
201 KAR 26:125  
201 KAR 36:040  
201 KAR 36:020  
201 KAR 36:020  
201 KAR 36:030  
201 KAR 36:040  
201 KAR 36:050  
201 KAR 36:050  
803 KAR 2:306E  
803 KAR 2:307E  
803 KAR 2:308E  
803 KAR 2:311E  
803 KAR 2:316E  
803 KAR 2:317E  
803 KAR 2:320E  
803 KAR 2:403E  
803 KAR 2:404E  
803 KAR 2:418E  
803 KAR 2:425E  
803 KAR 2:306E  
803 KAR 2:307E  
803 KAR 2:308E  
803 KAR 2:311E  
803 KAR 2:316E  
803 KAR 2:317E  
803 KAR 2:320E  
803 KAR 2:403E  
803 KAR 2:404E  
803 KAR 2:418E  
803 KAR 2:425E  
907 KAR 1:011  
787 KAR 1:200E  
904 KAR 2:380E  
501 KAR 8:011

Chapter 439  
  
439.340  
439.352  
439.356  
439.358  
533.010  
Chapter 645  
1998 Acts c. 75  
1998 Acts c. 105  
  
1998 Acts c. 166  
  
1998 Acts c. 256  
  
  
  
  
1998 Acts c. 556  
1998 Acts c. 575  
  
  
  
  
1998 GA, SB 353  
1998 GA, HB 315  
  
  
  
1998 GA, HB 429  
1998 GA, HB 496  
  
26 CFR  
29 CFR  
  
  
31 CFR  
34 CFR  
  
42 CFR  
  
45 CFR  
  
8 USC

501 KAR 6:020E  
501 KAR 6:040  
501 KAR 6:110  
501 KAR 1:030E  
501 KAR 1:050E  
501 KAR 1:050E  
501 KAR 1:050E  
501 KAR 2:070E  
603 KAR 7:080E  
105 KAR 1:230E  
105 KAR 1:170E  
105 KAR 1:230E  
601 KAR 1:140  
601 KAR 1:145  
11 KAR 4:070  
11 KAR 14:010  
11 KAR 14:020  
11 KAR 14:030  
11 KAR 14:040  
11 KAR 14:050  
11 KAR 14:060  
11 KAR 14:070  
11 KAR 14:080  
201 KAR 8:440  
11 KAR 4:070  
11 KAR 15:010  
11 KAR 15:020  
11 KAR 15:030  
11 KAR 15:040  
11 KAR 15:050  
11 KAR 15:060  
11 KAR 15:070  
806 KAR 3:131  
806 KAR 17:160E  
806 KAR 17:170E  
806 KAR 17:180E  
806 KAR 17:190E  
806 KAR 17:200E  
806 KAR 17:210E  
806 KAR 17:220E  
806 KAR 9:241  
806 KAR 3:131  
806 KAR 39:081  
105 KAR 1:230E  
803 KAR 2:306E  
803 KAR 2:307E  
803 KAR 2:308E  
803 KAR 2:311E  
803 KAR 2:316E  
803 KAR 2:317E  
803 KAR 2:320E  
803 KAR 2:403E  
803 KAR 2:404E  
803 KAR 2:418E  
803 KAR 2:425E  
11 KAR 4:050  
11 KAR 3:100  
11 KAR 15:060  
781 KAR 1:030  
782 KAR 1:030  
782 KAR 1:040  
907 KAR 1:011  
907 KAR 1:025E  
907 KAR 1:605  
907 KAR 1:645  
907 KAR 3:065E  
806 KAR 17:160E  
904 KAR 2:380E  
907 KAR 1:011



**KRS SECTION****REGULATION****KRS SECTION****REGULATION**

20 USC	11 KAR	3:100
	11 KAR	15:010
26 USC	105 KAR	1:230E
29 USC	781 KAR	1:030
	781 KAR	1:050
	782 KAR	1:030
	782 KAR	1:040
31 USC	11 KAR	4:050
38 USC	907 KAR	1:011
42 USC	806 KAR	17:160E
	806 KAR	17:220E
	904 KAR	2:018E
	904 KAR	2:490E
	907 KAR	1:006
	907 KAR	1:011
	907 KAR	1:025E
	907 KAR	1:605
	907 KAR	1:645
	907 KAR	3:065E
49 USC	601 KAR	9:135
	603 KAR	7:080E
PL 105-33	907 KAR	1:006

## SUBJECT INDEX

### **ABSENTEE BALLOT**

(See Elections, State Board)

### **AGENTS, CONSULTANTS, SOLICITORS, ADJUSTERS**

(See Insurance)

### **AGRICULTURE**

Livestock sanitation; 302 KAR Chapter 20

### **ART THERAPISTS**

Code of ethics; 201 KAR 34:040

Continuing education requirements; 201 KAR 34:030

### **ASSISTIVE TECHNOLOGY LOAN CORPORATION**

General eligibility criteria; 789 KAR 1:010

### **BLIND, DEPARTMENT FOR**

Appeal procedures; 782 KAR 1:040

Scope and nature of services; 782 KAR 1:030

### **CABINET FOR FAMILIES AND CHILDREN**

Social Insurance

Public assistance; 904 KAR Chapter 2

### **CABINET FOR HEALTH SERVICES**

Medicaid

Medicaid services; 907 KAR Chapter 1

Payment and services; 907 KAR Chapter 3

### **CLASS D FELONS**

(See Corrections)

### **COMMONWEALTH MERIT SCHOLARSHIP PROGRAM**

(See Higher Education Assistance Authority)

### **CORRECTIONS, DEPARTMENT OF**

Class D Felons

Work release; 501 KAR 2:070E

Execution Hearings

Repeal of 501 KAR 8:010; 501 KAR 8:011

Institution Policies and Procedures

Corrections policies and procedures; 501 KAR 6:020E

Kentucky State Penitentiary; 501 KAR 6:040

Roederer Correctional Complex; 501 KAR 6:110

Parole Board

Determining parole eligibility; 501 KAR 1:030E

Granting final discharge from parole; 501 KAR 1:050E

Psychiatric or Forensic Psychiatric Facility Victim Notification System  
System; 501 KAR 14:010E

### **COUNSELORS (PROFESSIONAL)**

Code of ethics; 201 KAR 36:040

Complaint management process; 201 KAR 36:050

Continuing education requirements; 201 KAR 36:030

Fees, renewal date; 201 KAR 36:020

### **DEAF AND HARD OF HEARING (COMMISSION)**

Interpreter Referral Services

Definitions; 735 KAR 2:010E

Grievance procedure; 735 KAR 2:060E

Interpreter protocols; 735 KAR 2:040E

Interpreter qualifications; 735 KAR 2:030E

Processing requests for services; 735 KAR 2:050E

Program parameters; 735 KAR 2:020E

### **DEER**

(See Fish and Wildlife Resources)

### **DENTAL HYGIENISTS**

(See Dentistry)

### **DENTISTRY**

Fee schedule; 201 KAR 8:440

### **DISTRICT SUPPORT SERVICES**

School Terms, Attendance, Operations

High school interscholastic athletics, designation of agent; 702  
KAR 7:065

### **EDUCATION, ARTS, AND HUMANITIES CABINET**

Education Department

District Support Services

School terms, attendance, operation; 702 KAR Chapter 7

Education Professional Standards Board; 704 KAR Chapter 20

### **EDUCATION DEPARTMENT**

District Support Services

School terms, attendance, operation; 702 KAR Chapter 7

### **EDUCATION PROFESSIONAL STANDARDS BOARD**

Kentucky Teacher Internship Program; 704 KAR 20:690

Written examination prerequisites for teacher certification; 704 KAR  
20:305

### **EDUCATION TECHNOLOGY FUNDING PROGRAM**

(See School Facilities Construction Commission)

### **EDUCATIONAL SAVINGS PLAN TRUST**

(See Higher Education Assistance Authority)

### **ELECTIONS, STATE BOARD**

Forms and Procedures

Absentee ballot application by facsimile; 31 KAR 4:130E

### **EMPLOYEES, STATE**

(See also Personnel)

Personnel

Board; 101 KAR Chapter 1

Retirement; 105 KAR Chapter 1

### **EMPLOYMENT SERVICES**

Unemployment Insurance

Maximum weekly benefit rate; 787 KAR 1:200E

### **ENGINEERING**

Repeal of 200 KAR 7:010; 200 KAR 7:011

### **EXECUTION HEARINGS**

(See Corrections)

### **FINANCE AND ADMINISTRATION**

Engineering; 200 KAR Chapter 7

Private Activity Bond Allocation Committee; 200 KAR Chapter 15

Property; 200 KAR Chapter 6

### **FISH AND WILDLIFE RESOURCES**

Fish

Commercial fishing requirements; 301 KAR 1:155

Bow fishing; 301 KAR 1:090

Fishing limits; 301 KAR 1:201



## SUBJECT INDEX

### Game

State park deer hunts; 301 KAR 2:179

### HEALTH INSURANCE CONTRACTS

(See Insurance)

### HIGHER EDUCATION ASSISTANCE AUTHORITY

#### Authority

Authority claims, set off; 11 KAR 4:050

Reports by postsecondary institutions; 11 KAR 4:070

#### Commonwealth Merit Scholarship Program

Definitions; 11 KAR 15:010

Determination procedure; 11 KAR 15:040

Disbursement; 11 KAR 15:050

Dual enrollment under consortium agreement; 11 KAR 15:030

Overaward, refund, repayment procedure; 11 KAR 15:060

Records and reports; 11 KAR 15:070

Student eligibility report; 11 KAR 15:020

#### Educational Savings Plan Trust

Benefits payable from the fund; 11 KAR 12:070

Definitions; 11 KAR 12:010

Residency classification for vested participation agreements; 11 KAR 12:040

Refund cancellation, payment; 11 KAR 12:060

#### Grant Program

Definitions; 11 KAR 5:001

#### Loan Program

Administrative wage garnishment; 11 KAR 3:100

#### Osteopathic Medicine Scholarship Program

Application of payments; 11 KAR 14:060

Award determination; 11 KAR 14:020

Disbursement process; 11 KAR 14:030

Notification; 11 KAR 14:070

Overawards and refunds; 11 KAR 14:040

Process; 11 KAR 14:010

Records and administrative regulations; 11 KAR 14:050

Repayment deferment; 11 KAR 14:080

### HIGHWAYS

#### Mass Transportation

Human service transportation delivery; 603 KAR 7:080E

### INSURANCE

#### Agents, Consultants, Solicitors, Adjusters

Repeal of 806 KAR 9:240; 806 KAR 9:241

#### Authorization of Insurers, General Requirements

Repeal of 806 KAR 3:130; 806 KAR 3:131

#### Health Insurance Contracts

Approval criteria, requirements for reentry into the Kentucky health insurance market; 806 KAR 17:220E

Creditable coverage for health insurance; 806 KAR 17:160E

Genetic testing; 806 KAR 17:170E

Guaranteed Acceptance Program reporting requirements; 806 KAR 17:210E

Guaranteed Acceptance Program requirements; 806 KAR 17:190E

Severity codes for high-cost conditions; 806 KAR 17:200E

Standard health benefit plan, comparison format; 806 KAR 17:180E

#### Motor Vehicle Repairs (No-fault)

Repeal of 806 KAR 39:080; 806 KAR 39:081

### INTERPRETER REFERRAL SERVICES

(See Deaf and Hard of Hearing (Commission))

### JUSTICE CABINET

#### Corrections Department

Class D felons; 501 KAR Chapter 2

Execution hearings; 501 KAR Chapter 8

Institution policies and procedures; 501 KAR Chapter 6

Parole Board; 501 KAR Chapter 1

Psychiatric or Forensic Psychiatric Facility Victim Notification System; 501 KAR Chapter 14

#### State Police

Sex Offender Registration System; 502 KAR Chapter 31

### KENTUCKY LOAN PROGRAM

(See Higher Education Assistance Authority)

### KENTUCKY WORKS

(See Social Insurance)

### LABOR CABINET

Occupational safety, health; 803 KAR Chapter 2

### LIVESTOCK SANITATION

Composting of domestic livestock, poultry, fish; 302 KAR 20:051

Entry into Kentucky; 302 KAR 20:040

### MEDICAID

#### Medicaid Services

Income standards; 907 KAR 1:640

Initial, continuing eligibility, procedures for determining; 907 KAR 1:605

Nursing, intermediate care facilities for the mentally retarded, payments; 907 KAR 1:025E

Resource standards; 907 KAR 1:645

Technical eligibility requirements; 907 KAR 1:011

Title XVIII benefits, coverage for eligible persons; 907 KAR 1:006

#### Payment and Services

Nonemergency medical transportation waiver services, payments; 907 KAR 3:065E

### MOTOR CARRIERS

(See Vehicle Regulation)

### MOTOR VEHICLE REPAIRS

(See Insurance)

### MOTOR VEHICLE TAX

(See Vehicle Regulation)

### MURRAY STATE UNIVERSITY

Affiliated corporations; 772 KAR 1:070

Annual audit; 772 KAR 1:030

Financial management responsibility delegation; 772 KAR 1:020

Fund acquisition, disbursement, accounting system, records and annual report; 772 KAR 1:010

Fund for excellence; 772 KAR 1:060

Issuance of bonds; 772 KAR 1:050

Purchase, inventories, sales of surplus property, capital construction procedures; 772 KAR 1:040

### OCCUPATIONAL SAFETY, HEALTH

Air contaminants; 803 KAR 2:320E

Fire protection; 803 KAR 2:311E

Hazardous materials; 803 KAR 2:307E

Occupational health, environmental control; 803 KAR 2:306E; 803 KAR 2:403E

Personal protective equipment; 803 KAR 2:308E

Personal protective, life saving equipment; 803 KAR 2:404E

Special industries; 803 KAR 2:317E

Toxic and hazardous substances; 803 KAR 2:425E

Underground construction, caissons, cofferdams, compressed air; 803 KAR 2:418E

Welding, cutting, brazing; 803 KAR 2:316E



## SUBJECT INDEX

### OCCUPATIONS AND PROFESSIONS

Art therapists; 201 KAR Chapter 34  
Counselors (professional); 201 KAR Chapter 36  
Dentistry; 201 KAR 8:440  
Psychology; 201 KAR Chapter 26

### OSTEOPATHIC MEDICINE SCHOLARSHIP PROGRAM

(See Higher Education Assistance Authority)

### PAROLE BOARD

(See Corrections)

### PENAL INSTITUTIONS

(See Corrections Department)

### PERSONNEL

(See also Employees, State)  
Board

Probationary periods; 101 KAR 1:325

### PRIVATE ACTIVITY BOND ALLOCATION COMMITTEE

Formula for allocation of private activity bonds; 200 KAR 15:010

### PROPERTY (STATE)

Lease of new construction; 200 KAR 6:060E

### PSYCHIATRIC OR FORENSIC PSYCHIATRIC FACILITY VICTIM NOTIFICATION SYSTEM

(See Corrections)

### PSYCHOLOGY (BOARD)

Health service provider designation; 201 KAR 26:125  
Licensure or certification by reciprocity, 201 KAR 26:180  
Nonresident status; 201 KAR 26:215  
Scope of practice; 201 KAR 26:121

### PUBLIC PROTECTION AND REGULATION

#### Insurance

Agents, consultants, solicitors, adjusters; 806 KAR Chapter 9  
Authorization of Insurers, general requirements; 806 KAR Chapter 3  
Health insurance contracts; 806 KAR Chapter 17  
Motor vehicle reparations (no-fault); 806 KAR Chapter 39  
Tax Appeals Board; 802 KAR Chapter 1

### RETIREMENT

Kentucky Employees Retirement System  
Membership form requirements; 105 KAR 1:170E  
Reemployment after retirement; 1065 KAR 1:230E

### SCHOOL FACILITIES CONSTRUCTION COMMISSION

Education Technology Funding Program  
Guidelines; 750 KAR 2:010E

### SEX OFFENDER REGISTRATION SYSTEM

(See State Police)

### SOCIAL INSURANCE

#### Public Assistance

Child Support Enforcement Program application process; 904 KAR 2:380E  
Transportation services for Kentucky Works; 904 KAR 2:018E  
Welfare to Work Grant Program; 904 KAR 2:490E

### STATE POLICE

Sex Offender Registration System  
System; 502 KAR 31:020E

### TAX APPEALS (BOARD)

Rules of practice and procedure; 802 KAR 1:010

### TOURISM DEVELOPMENT CABINET

Fish and Wildlife Resources  
Fish; 301 KAR Chapter 1  
Game; 301 KAR Chapter 2

### TRANSPORTATION CABINET

Highways  
Mass transportation; 603 KAR Chapter 7  
Vehicle Regulation  
Motor carriers; 601 KAR Chapter 1  
Motor vehicle tax; 601 KAR Chapter 9

### UNEMPLOYMENT INSURANCE

(See Employment Services)

### VEHICLE REGULATION

Motor Carriers  
Taxicabs, limousines, disabled persons vehicles; 601 KAR 1:115  
U-drive-it permit application procedures; 601 KAR 1:140  
U-drive-it permit, usage tax reporting, paying; 601 KAR 1:145  
Motor Vehicle Tax  
Apportioned registration; 601 KAR 9:135

### VICTIM NOTIFICATION

(See Corrections)

### VOCATIONAL REHABILITATION

#### Administration

Carl D. Perkins Comprehensive Rehabilitation Center; 781 KAR 1:050  
Selection, economic test, order; 781 KAR 1:030

### WORKFORCE DEVELOPMENT CABINET

Assistive Technology Loan Corporation; 789 KAR Chapter 1  
Blind, Department for; 782 KAR Chapter 1  
Employment Services  
Unemployment insurance; 787 KAR Chapter 1  
Vocational Rehabilitation  
Administration; 781 KAR Chapter 1

